



Office of the City Auditor

WESTWORLD CONTRACT COMPLIANCE

WestWorld is the result of a federal-local-private partnership to develop a premier equestrian facility and destination tourist attraction. Although it has not evolved as rapidly as originally envisioned, progress has been made. This report explores options available to strengthen and expand on the development.

**Report No. 9103
September 1993**

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SCOTTSDALE CITY COUNCIL

Herbert Drinkwater, Mayor
Councilman Greg Bielli
Councilman James Burke
Councilman Sam Campana
Councilman Mary Manross
Councilman Bill Soderquist
Councilman Richard Thomas

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September 8, 1993

To the Most Honorable Herbert R. Drinkwater, Mayor
and the Members of the Scottsdale City Council:

Transmitted herewith is the WestWorld Contract Compliance Report No. 9103. This audit was a scheduled project approved by City Council as part of the City Auditor's 1991 audit program.

Apart from restricted access, audit work was conducted in accordance with generally accepted governmental auditing standards as they relate to expanded scope auditing in a local government environment and as required by Article III Scottsdale Revised Code §2-117, *et seq.*

If you need any additional information or have any questions, please feel free to contact the Office at 994-7756.

Respectfully submitted,

A handwritten signature in cursive script, reading "Cheryl Lee Barcala".

Cheryl Barcala, CIA, CPA, CFE

CB:Gail Crawford, CPS

Table of Contents

ACTION PLAN	i
EXECUTIVE SUMMARY	1
Results In Brief	1
Recommendations	2
Management Response	2
CHAPTER ONE	3
The Vision Of Scottsdale Western And Equestrian Center And WestWorld Today	3
The vision of a world class destination center	3
WestWorld today	5
Operating structure	7
Revenue Streams And Economic Impact	8
Use fee income	8
Reinvestment of profit	9
Return on investment	9
Protecting City Interest During Negotiations Needed	9
Scope of project changed	9
Qualifications and commitment verifications needed	10
Financial backing verifications needed	12
Available Options Should Be Considered For the Contract	13
Mechanism needed to monitor use of development funds or development priorities	13
City goals for park may not always coincide with developer needs	14
City review and approval of development needed	15
Enforceable development timetables needed	16
City protection important should developer default	18
Reassertion Of City Responsibility Towards Development Needed	19
City performance under the land use agreement	19
City involvement in future development needed	21
Periodic review of results of development needed	21

CHAPTER TWO	23
Compliance With Contract Terms	23
Park financial arrangements and expansion	23
Construction costs increased	24
Park improvements not owned by the City	24
Improved contract administration enacted	24
Revenue reporting controls could be improved	25
Subcontract approval should be emphasized	26
Monitoring of fee schedule needed	27
Usage of public park area could be enhanced	28
Operations monitoring important	29
Use of facilities needs to be reviewed	29
Added review of new construction and amendment of management plan needed	30
Monitoring of reservation system required	31
Cost identification needed	31
Safeguarding of City owned assets could be improved	32
Acknowledgment of Reclamation participation	32
CHAPTER THREE	33
Contract And Procedural Improvements Available	33
Improvements in safeguarding City assets	33
Revenue classifications require clarification	33
Asset management issues need attention	35
City responsibility under the Land Use Agreement	36
Access to financial records could be strengthened	36
Fee determination and approval process improvements available	37
Establishment of a capital reserve warranted	38
Performance Measures Needed	39
City's Interest Should Be Protected If Contract Disputed Or Dissolved	40
Acknowledgment Of City's Role Should Be Considered	40

CHAPTER FOUR	43
Enhancements Needed In Development Of Contracts And Amendments	43
Determination of actual contract needed	43
Contract modified after Council approval	44
More than one version of a signed contract exists	44
Multiple documents resulted in desparate administration	46
City Clerk certified a LMA version	46
LMA used to obtain financing	48
Only original found in possession of developer	49
Amendments Not Properly Executed	49
RECOMMENDATIONS	51
OBJECTIVES, SCOPE AND METHOD	55
APPENDIX A: Management Responses	57
APPENDIX B: WestWorld Management Responses	59

WESTWORLD CONTRACT COMPLIANCE ACTION PLAN

No.	MANAGEMENT RESPONSE		IMPLEMENTATION STATUS		PROPOSED RECOMMENDATIONS
	AGREE	DISAGREE	UNDERWAY	PLANNED	
1	X		X		The City Manager should initiate a review of the master plan for the park with the ultimate goal to redefine, re-assert or modify the intent of the park and the direction of the park in the future.
2					The Contract Officer should:
a	X		X		develop specific performance criteria to ensure that future development meets the intent of the park. The procedures should include review of financial arrangements, subcontractors, and assurance that the City's revenue interest is protected.
b	X		X		instruct WestWorld management to submit all future development requests to the Contract Officer for approval prior to submission to development review.
c	X		X		establish procedures to periodically monitor the operations at the park to ensure that the usage of facilities adheres to the approved usage.
d	X			1-1-94	develop procedures to ensure that all costs associated with the construction, maintenance, and improvements at the park and costs for the contract administration are accurately captured on City records. Funds expended should be periodically compared with revenues generated, and reported to City management and Reclamation.
e	X		X		develop a checklist of contract requirements and develop procedures to ensure that all requirements are completed as directed.
f	X			1-1-94	pursue discrepancies in use payments noted for years 1988 through 1990.
g	X		X		develop criteria regarding approval of subcontracts at WestWorld. Procedures should then be developed to ensure that all subcontracts are approved prior to commencement of the activity.
h	X		X		develop procedures to periodically monitor the fees charged at WestWorld to ensure adherence to the fee schedule. Documentation should be maintained to support oversight of the policy.
i	X		X		develop procedures to adequately monitor the availability of the public park area, fees charged and the maintenance of the area. Complete documentation should be maintained to support the oversight of these functions.
j	X		X		develop procedures to periodically monitor the reservation system. Documentation should be maintained to support the oversight of the system.

WESTWORLD CONTRACT COMPLIANCE ACTION PLAN

No.	MANAGEMENT RESPONSE		IMPLEMENTATION STATUS		PROPOSED RECOMMENDATIONS
	AGREE	DISAGREE	UNDERWAY	PLANNED	
k	X		X		in conjunction with Reclamation and WestWorld management, work toward installation of a sign which would fulfill the obligation to acknowledge Reclamation's role in the development of the park.
l	X		X		develop procedures to ensure that all revenue streams at the park are captured and reflected in the calculation of the use payment.
m	X			1-1-94	develop an inventory of all personal property located at WestWorld, purchased by the City, with City funds or with cost sharing monies. After determination of the quantity and value of these items, logical and cost-effective administration alternatives for monitoring or transferring the ownership of the property should be developed.
n	X		X		develop procedures to ensure that all requests and actions related to WestWorld are adequately documented.
o	X			1-1-94	research, prepare the proper Council Action and present an amendment to the use agreement to amend the parcel legal descriptions.
3					The Contract Officer and WestWorld management should work together to:
a	X		X		develop and act to incorporate submission of certified financial statements as a requirement into future contract addenda.
b	X		X		develop and act to incorporate specific performance measures into future contract addenda.
c	X		X		develop and act to incorporate a capital reserve requirement into future contract addenda.
d	X		X		develop procedures to submit all additional revenue streams for City approval and determination of payment status prior to implementation.
e	X		X		review the fees charged for entrance to/use of the park. Care should be taken to ensure that the fees collected for entrance to/use of the park do not subsidize "non-recreational" activities at the park.
f	X		X		develop and act to incorporate language to protect the City's interest in the park upon the death or disability of the managing partner into future contract addenda.
4					The Contract Office, in conjunction with Reclamation, should:
a	X		X		develop procedures for fee increases to ensure adequate public notice prior to implementation.
b	X		X		identify documentation to be maintained by the City regarding park operations. Procedures should then be implemented to require WestWorld to supply copies of the requisite documents.

WESTWORLD CONTRACT COMPLIANCE ACTION PLAN

No.	MANAGEMENT RESPONSE		IMPLEMENTATION STATUS		PROPOSED RECOMMENDATIONS
	AGREE	DISAGREE	UNDERWAY	PLANNED	
5					<p>The City Manager should:</p> <p>obtain direction from legal counsel regarding the actual contract between WestWorld and the City.</p> <p>direct all City departments to return copies of the Lease Management Agreements and Use Management Agreements to the Contract Officer for disposal. After determination of the correct document, a master contract should be developed with stamped identification numbers on each page and filed with the City Clerk. A bound document containing both the contract and the land use agreement with all appropriate exhibits and amendments should be prepared for distribution to anyone needing information regarding the park.</p> <p>in conjunction with the City Clerk and the City Attorney, prepare procedures governing the preparation, review, finalization, and safekeeping of contracts entered into by or on behalf of the City.</p> <p>in conjunction with the City Attorney and City Clerk, prepare procedures regarding the release of copies of contracts. These procedures should instruct City staff to only release complete, exact copies of contracts or to refer the request to the City Clerk.</p>
a	X		X		
b	X			11-1-93	
c	X		X		
d	X		X		

EXECUTIVE SUMMARY

WestWorld Contract Compliance
City Auditor Report No. 9103

This report reviews the development, current results and potential impact of WestWorld of Scottsdale. Recommendations are offered to improve City contract administration and to strengthen the relationship among the participants.

Elected officials and City management pursued the creation of the federal-local-private partnership to develop WestWorld to provide a "first-class" equestrian facility, combined with a premier tourist destination. The vision, in part, has been accomplished. The equestrian facilities, "Phase One" in park privatization, have been completed. The Scottsdale Arabian Horse Show, which according to City Economic Development generates more than \$10 million in show-related expenditures, has been held at the park since 1988. Other events such as the Barrett Jackson Auto Auction and other horse shows, concerts and polo matches also have been staged.

WestWorld and City management have demonstrated a commitment to ensuring that the park offers first-class recreation. While WestWorld has not evolved as rapidly or as faithfully to the City's original vision, its wide range of amenities results in use for various event types. City revenue, as a result, has increased each year. In addition, WestWorld has expanded the City tourist revenue base.

Results In Brief The equestrian facilities built by the City, the Equidome and restaurant built by the developer, and the public park area built in conjunction with the Bureau of Reclamation (Reclamation) are considered by many park users to be the finest facilities in the Valley. Events held at the park are increasing in number and diversity each year and the revenues to the City have increased correspondingly. There are, however, opportunities available to City Management which could enhance the potential for future development at the park.

These opportunities, such as developing procedures to monitor the availability of the public park area, exploring options available to strengthen timetables for future development and becoming more actively involved in the planning, operating and marketing of the park, would help ensure that the park continues to progress towards the vision and would strengthen the long-term relationship between the City and WestWorld.

Recommendations Recommendations are set out at the conclusion of the report for management's consideration. These include 1) initiation of a review of the master plan, 2) development of policies and procedures to monitor the development of the facility as well as compliance with contract terms, and 3) determination of the actual contract governing the relationship between the City and WestWorld.

Management Response City management agrees with the recommendations stating:

The City of Scottsdale Management has initiated the review process of the Master Plan for development at WestWorld. New WestWorld management agrees that this is a high priority, and that the previously approved conceptual Master Plan needs to be reviewed to determine if elements of that plan are still appropriate for development at WestWorld.

In addition, the majority of the recommendations outlined in the WestWorld audit, regarding daily operation, reservation procedures, financial and revenue reconciliation, and fees and charges for amenities at WestWorld, are currently under review with the WestWorld manager, the City of Scottsdale, and the Bureau of Reclamation.

Detailed recommendations are located after Chapter 4, City management responses can be found in Appendix A, and WestWorld management responses are located in Appendix B.

CHAPTER ONE

WestWorld Contract Compliance
City Auditor Report No. 9103

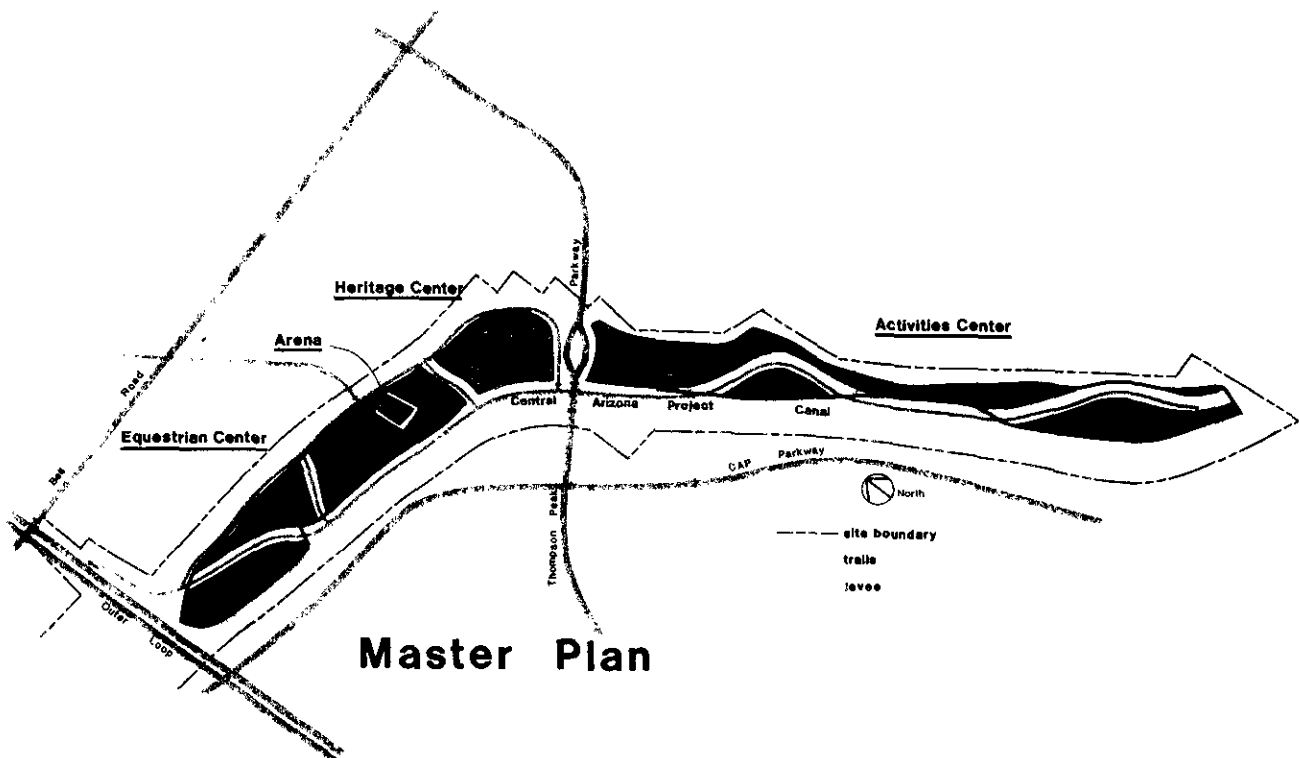
The Vision Of Scottsdale Western And Equestrian Center And WestWorld Today

The vision which served as the basis for the privatization of the development and management of WestWorld has yet to be accomplished. The goal, as stated in the prospectus soliciting development teams, "was to provide a destination attraction unique in all the United States." The park was designed to provide the most complete equestrian facilities combined with activities which would attract other visitors. While development has occurred since the privatization, it has not progressed as rapidly as originally envisioned nor is there any assurance that additional development will occur. Additionally, the City's interest in, and ability to control, the rate and type of development at the park is not protected in the contract.

The vision of a world class destination center

The park evolution dates from 1980 when Scottsdale Airport expansion displaced an equestrian park known as Cholla Park. The search for a suitable location for a replacement park ended with the identification of federal land available for recreational development. A master plan for a proposed "new" Cholla Park was completed in May 1981, and approved by City Council.

In 1982, the City of Scottsdale and Reclamation entered into a Cost-Sharing and Land Use Agreement (land use agreement) for approximately 132 acres of land north of the Central Arizona Project aqueduct. Between 1982 and 1984, the City constructed an equestrian park known as "Horseman's Park." During the planning and construction of the replacement equestrian facility, the City became aware that the Arabian Horse Association of Arizona was going to lose its property lease in a neighboring community. City management decided to attempt to persuade the show to relocate here. At the same time, tourist industry studies raised concerns regarding the amount, type and quality of City attractions. These interests, plus the availability of the federal land on which to create a recreational showcase combining world-class golf facilities, premier equestrian facilities, and other western activities, with the proximity of the resorts and the allure of the McDowell Mountains, was considered an excellent opportunity. City Council and Reclamation approved expanding the design of the park and, after completion, approved a master plan.



Master Plan

THE FOUR ELEMENTS

THE EQUESTRIAN CENTER

Intensive equestrian use areas and related facilities (constructed by City).

THE ARENA

10,000 seat, climatized, fully enclosed.

HERITAGE CENTER

Western and equestrian oriented exhibitions and museums.

ACTIVITIES CENTER

Equestrian compatible commercial activities specifically designed to attract visitors and complement other elements.

SOURCE: Scottsdale Western & Equestrian Center Prospectus

In 1985, after initial construction estimates for the equestrian facilities and enclosed arena were completed, City management projected that privatization of the park would accelerate the development schedule and maximize revenues to the City. The City Attorney determined that park privatization met the criteria for the public bid process.

A prospectus for a project known as the Scottsdale Western and Equestrian Center was developed by Community Planning and was used to solicit proposals from development teams. The prospectus outlined the characteristics of the four elements contained in the master plan. The Equestrian Center was funded by the City and was in the process of being constructed during the solicitation. The projected result was to have the equestrian facility operated under a concession agreement with the public use area maintained as a City park. The three remaining elements of the project would be developed and operated by private parties.

A review team, consisting of City staff and a Reclamation representative, reviewed qualifications and interviewed the four development teams submitting proposals. Additional information

was requested from two of the teams and final negotiations were held with K-Lin. After City staff and K-Lin representatives agreed upon contract terms, City Council authorized a separate contract with an outside consultant, Pannell Kerr Forster (Pannell), to review the proposal, the contract and the feasibility of the projected results. Based on the results of this process, the contract for the development and management of the park was awarded.

The evaluation concluded that the park, if properly developed, would help the City broaden its tourist base and its appeal as a resort destination. It concluded that the park had the ability to stimulate further development in the area surrounding the facility. Pannell stated that its conclusions and projections assumed competent and efficient management and no significant change in the facility's projected competitive position.

After hearing the presentation, City Council approved the staff recommendation to enter into a contract, noting that the approval was subject to Reclamation's approval of the document. Reclamation requested some modifications, but in December 1986 gave final approval to the contract.

WestWorld today During the planning process and the privatization negotiations, all the participants recognized that the development needed to be profitable so that investors would be interested in the project. WestWorld management aggressively pursued development and marketing of the park in an attempt to fulfill the vision; however, the needs and goals of WestWorld management have not always meshed with the City's intent for the park.

WestWorld is a large facility. The park consists of approximately 400 acres of federal land located north of the aqueduct. The property is east of Pima Road and adjacent to the Frank Lloyd Wright Historic District. As a requirement in the land use agreement, development in the vicinity of Taliesin West must be coordinated with the Arizona State Historic Preservation Office and the Frank Lloyd Wright Foundation. The majority of the development to date has been within the boundaries of Phase One of the master plan.

The park currently consists of several arenas, a full service restaurant and banquet hall, as well as support facilities and amenities such as polo fields, recreational vehicle (RV) parking spaces, permanent barn structures and space for temporary barns.



SOURCE: Bureau of Reclamation

Use of these amenities is governed by rules and regulations prepared by WestWorld management and approved by the City and Reclamation. Included in the park is an area identified by contract as a public park area. This area consists of facilities constructed under the land use agreement with Reclamation. Use and rental fees for this area are set by City ordinance. WestWorld is required to adhere to the rates set by the ordinance.

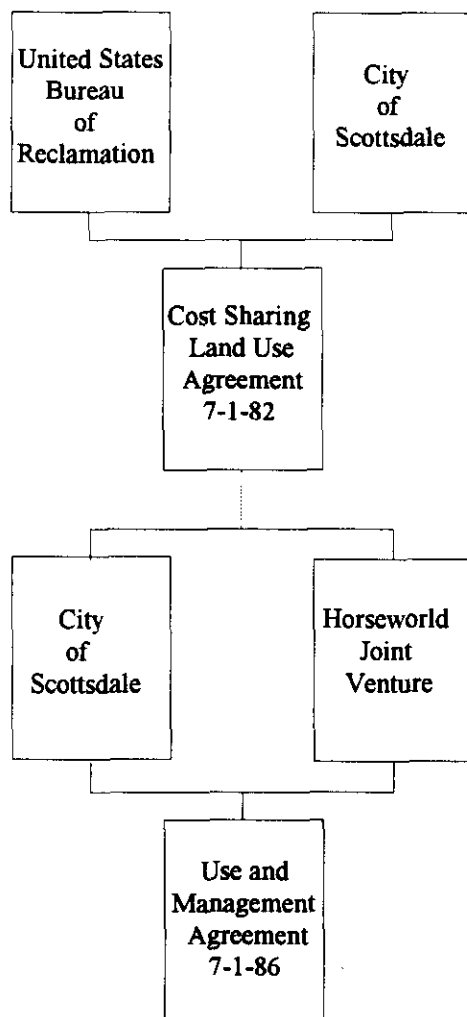
To date, the development of the non-recreational aspect of the

park has been somewhat balanced with recreational opportunities. Marketing efforts have pursued various options, staging numerous equestrian events, concerts, and auctions while catering private parties and commercial business parties as well as renting the facility to commercial entities to conduct activities such as bungee jumping, jackpot roping and retail sales. Previously, the opportunity for a commercial movie studio was pursued and conceptual plans for an 8,000-seat amphitheater have been approved.

Recreational use of the park has taken place. In 1989, a subcontract providing for a stables offering horseback rides, hayrides and destination meal rides increased the recreational opportunities at the park. Arenas are available for use at rates lower than those set by City ordinance prior to privatization. Use of the public park area is still available, but not promoted, and individuals or groups can trailer onto the park to use the trails into the McDowell Mountains.

Operating structure

The project itself is based on a land use agreement between Reclamation and the City and a Use and Management Agreement (contract) between the City and the developer known today as Horseworld Joint Venture (joint venture).



The land use agreement is for a term of 50 years with an option to renew for an additional 25 years. It requires Reclamation to approve fees collected for the entrance to and use of the facilities. It stipulates that the fees must be used to "develop, operate, maintain, and/or improve the facility and lands."

The contract is also for a period of 50 years with an option to renew for an additional 25 years. It stipulates a payment to the City based on two percent of the joint venture's gross receipts. Terms and other requirements generally acknowledged to govern the contract, as well as the land use agreement, are the subject of this report.

Initially, the contract was between the City and K-Lin, Inc. In 1987, K-Lin formed a joint venture with a corporation [Horseman's Park Development Corporation (HPDC)] owned by Sun State Savings and Loan. K-Lin then requested that the joint venture be substituted as the developer. In 1990, the City was asked to approve the transfer of the partnership interest previously owned by HPDC to Capital Realty Corporation - Scottsdale. The park is operated under the trade name WestWorld of Scottsdale.

In December 1989, the Joint Venture entered into a subcontract with Hank's Riding Stables to operate a horse rental concession at the park. This subcontract was approved by both the City and Reclamation. By means of a "memo of understanding" incorporated into the subcontract, two percent of Hank's gross receipts are paid through WestWorld to the City.

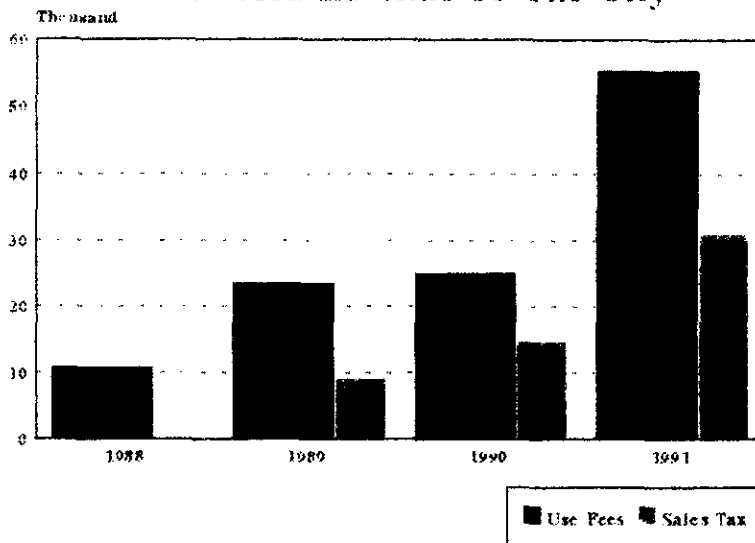
Revenue Streams And Economic Impact

The vision of the park included not only establishment of a first-class equestrian facility and destination theme park, but also expectations of a monetary benefit to the City. This benefit is realized through use payments from WestWorld and its subcontractors as well as through tax revenue. Additional benefits result from revenues generated from the increased tourism fostered by such efforts as the Scottsdale Arabian Horse Show and the Barrett Jackson Auto Auction. Restrictions on revenue use, contained in the land use agreement, necessitate distinction between financial "profit" and other benefits the park makes available to the City.

Use fee income Revenues come to the City in the form of use payments and sales/use tax paid by WestWorld and its subcontractors. Use payments are based on two percent of the gross receipts received by the

Joint Venture. The contract does not stipulate use payments to the City by subcontractors. It does, however, require the Joint Venture to dedicate two percent of gross receipts earned from any development on private land constructed and owned by them if the activity on the private land is reasonably related to the park. To date, no private land has been acquired nor has there been development related to the park on private land. WestWorld management does have a planning permit for state land located to the north.

WestWorld Revenue To The City



SOURCE: Audit Analysis and Concessionaire Payments

During 1991, more than 380 events consisting of equestrian activities, concerts, dog shows, commercial activities and private parties were held at WestWorld. Gross receipts, including both facility rental revenue and concession revenue reported by WestWorld management was approximately \$2.77 million, resulting in a use payment to the City of \$56,000.

Reinvestment of profit The land use agreement requires that only two types of revenue (entrance and use fees) be reinvested in the management, maintenance or improvement of the park. The only fees charged for entrance to or use of the park are facility rental fees and other associated charges. Sales tax revenue and food/beverage concession revenue is not restricted. Currently, City revenue from entrance and use fees is less than \$17,000 annually. Unless revenues earned from these sources increase, revenue from entrance and use fees will not pay back the City's initial investment during the lifetime of the land use agreement. If future revenues do increase, the City will need to monitor the percentage of revenue generated from the restricted fees to ensure that excess monies are appropriately reinvested.

Return on investment In contrast to the profit projections, the City's total return on investment represents all monetary benefits expected from the park. Projected City revenue from use fees and sales/use tax receipts is estimated to reach \$90,000 per year in 1992. Using current projections of revenue, there will be no financial return on the City's investment in the park as a direct result of use fees and sales tax paid by WestWorld.

Protecting City Interest During Negotiations Needed The balance between non-recreational and recreational use is important to the City, but appears not to have been adequately protected by the contract. Other issues such as: The City's desires to create a tourist destination, the public recreational requirements under the land use agreement, and the financial ability of the developer to continue development were not addressed. Opportunities which were available to reduce risk and to protect the City's interest in park development were not realized during privatization negotiations. City of Scottsdale charter directives may not have been fulfilled, lessening intended protection of parties interested in doing business with the City on the project.

Scope of project changed The scope of the project, as defined in the prospectus and literature provided prior to the bid award, was changed during the negotiations without resolicitation. Instructions accompanying the request for proposals sent to interested parties included the statement, "the proposed development must include a 10,000 seat

enclosed, climate controlled arena of acceptable design to be financed and constructed by the proposing team.” According to City staff involved in the process, none of the four proposals received met requirements. Eventually, two developers were asked to submit an alternate proposal for a scaled-back arena and for financing of the project.

The revised K-Lin proposal was the only one received. The second team declined to submit a revised proposal stating:

...commercial uses for the excess land are so limited, because of Bureau of Land Management's */sic/* constraints, that the land will not provide the kind of leverages we had all hoped for which could be applied toward the economics of the arena.

The intent of the public bid process is to ensure that all parties interested in doing business with the City have an equal opportunity. In order to accomplish this, any significant changes or alternatives in scope should have been communicated to all interested parties. This did not occur with this contract.

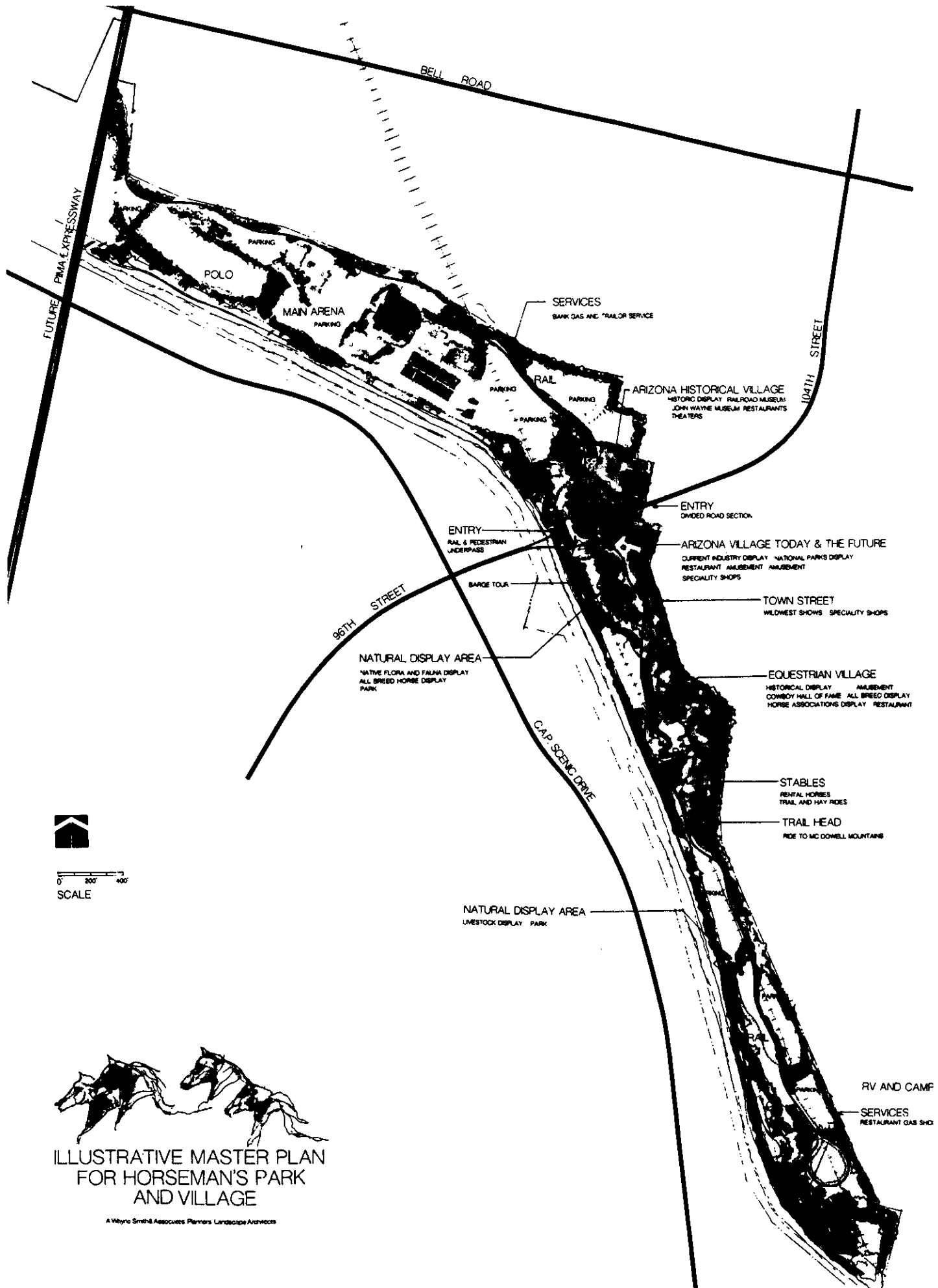
The City's Economic Development Coordinator in charge of the solicitation stated that the project was not resolicited because a review team did not believe that there would be any additional interest in the project. He indicated that, at the time, several factors such as the park's location in a flood plain, City management concerns and federal ownership negatively affected the quality of responses. The review team did not believe that a change in the requirement for an arena was significant enough to increase interest in the project. No formal action or documentation was available to support that conclusion.

**Qualifications and
commitment verifications
needed**

As part of the solicitation process, K-Lin submitted a package detailing its development proposal and conceptual design of the project. The proposal outlined the financing and development skill of its proposed management team as well as commitments from other individuals who would participate. The proposal included a list of 45 points detailing why they should be selected as the developer. During the City's review, oral discussions with some parties were held, but independent written confirmations on the projects, activities and commitments were not obtained. Many

EXHIBIT 1

Developer's
Conceptual Rendering
Of Project



statements in the proposal were not verified. Other statements served to enhance the qualifications outlined in the K-Lin proposal, and, according to City staff, influenced selection.

Pannell stated:

While several of these operators were alluded to in the K-Lin proposal, or in conversations which we had with [the principal], none of them have made a commitment to join the Horseman's Park project at this time.

After award of the contract, commitments, activities and projected results implied in the proposal did not materialize. Because the contract does not contain specific requirements, the City has been unable to demand specific compliance with assertions made by K-Lin to win the contract. Additionally, the development

and timetables indicated in the proposal were not included as performance measures as a means of monitoring K-Lin's progress.

K-Lin's Proposal Included

- Develop 16,000 seat enclosed arena ready for booking in 1991.
- Show dates equating to 95 percent of facility usage.
- Professional judging seminars once a year.
- Horseman's Institute for vocational training.
- Fully climatized, 4,000 gross seating arena.
- Relocation of "Rawhide" to the park.
- John Wayne museum.
- Western theme park.

**Financial backing
verifications needed**

Even though considered a major factor in privatization, the financial backing necessary to complete the park was not verified prior to contract award. Further, the City did not require posting of any form of performance bond or surety to ensure that funds would be available to finance and operate the development.

Pannell stated:

There are no detailed plans addressing the source and method of financing the proposed development. However, [K-Lin] indicates that there are several lending institutions interested in the proposed project. While this is a very large project, it is anticipated that it will be developed over time, and that other developers will be involved in the project, bringing additional strength, and sources of financing to the project.

Financing of the scaled back arena and future planning expense was estimated by K-Lin to be \$3 million and was to be secured by private financing. Funds needed to develop Phase Two or to construct the bridge over the aqueduct were

not delineated. To date, park development has occurred as a result of two separate financing arrangements. In 1987, a joint venture agreement between K-Lin and Sun State Savings and Loan brought in approximately \$4 million in development funds. The second, between K-Lin and Capital Realty Corporation brought development funds in 1989, 1990, and 1991. According to information supplied by WestWorld, funds loaned by Capital Realty Corporation principals totalled \$7.2 million as of the end of 1991.

Both City and WestWorld management agree that unexpected downturns in both the equestrian and the real estate markets have affected the ability to obtain needed financing. However, the City did not verify the financial status or the capability of K-Lin to continue the development if outside financing could not be obtained. At the close of 1991, K-Lin itself had less than \$50,000 invested in the project. The lack of funding as well as the absence of enforceable development timetables combined with lack of performance bonds has left the City in a position of relying on WestWorld's self-directed timetable for soliciting funds and developing park features.

Available Options Should Be Considered For The Contract

Several options that would have protected the City's interest were not included in the contract. While the contract specifies use for recreational purposes and defines responsibility for development, it is silent on the types of activities to be developed. Compliance measures which were included, such as timetables for the development, have been difficult to enforce. Other provisions are open to interpretation, making administration of the contract difficult.

Mechanism needed to monitor use of development funds or development priorities

While the contract specifies land use will be for recreational purposes and defines the responsibility for the development between the City and WestWorld, it is silent on the type of activities to be developed. WestWorld is responsible for developing everything not included in Phase One. The contract requires WestWorld management, during Phase Two, to 1) construct a four-lane bridge over the aqueduct at 96 Street, 2) operate and manage the park, and 3) construct, operate and maintain various theme park activities.

The contract does not require that funds obtained by WestWorld management for development at the park actually be used for development or construction. During our review of the 1987 and 1988 result of operations, we noted that K-Lin had obtained more than \$3 million in contributed capital and loans from Sun State. Of this, \$1.4 million was invested in fixed asset improvements while more than \$300,000 was paid in office salaries, and another \$390,000 was paid in management fees, and almost \$.5 million was loaned to a polo corporation owned and controlled by WestWorld management.

Further, the contract does not provide a mechanism for the City to monitor the priorities placed on the use of funds when determining what development should take place. For example, funds obtained as a result of financing arrangements with Capital Realty were used to construct the restaurant and banquet facility, instead of recreational facilities proposed during the solicitation, or instead of paying the cost of planning, designing or constructing the bridge. WestWorld management indicated that "return on investment" determines the priority placed on development. While this profit motivation has merit, it may not always coincide with the City's desires for the park or the intent of the land use agreement.

**City goals for park may not
always coincide with
developer needs**

The City's goal in privatizing the development and management of the park was twofold. The first was to create a destination attraction which would accommodate a full range of equestrian activities from international shows to polo and rodeo as well as providing complete educational, entertainment and commercial facilities designed to attract visitors. The facility was designed to provide public use areas for local residents while combining revenue-generating facilities.

The second goal was to have the greatest possible portion of the project and its components developed and operated by private participants in order to accelerate the development schedule and maximize revenues to the City. These goals may not always coincide with WestWorld management's direction and the contract does not contain a mechanism to ensure that the City's goals will be met. This difference was evident when K-Lin stated during the Council review of the proposal in 1988 that:

...the first goal of privatization of Horseman's Park was a business venture for profit...

Pannell suggested that the lack of an adequate return from the operations of the equestrian facilities would act as an incentive to K-Lin to develop the commercial components of the facility.

The financial incentive, as predicted by Pannell, has resulted in emphasis being placed on non-recreational development at the park. This development, including the restaurant, banquet hall, catering business, and solicitation of business functions, has increased park revenue.

The importance of developing a means to review activities, such as these, prior to approval can be illustrated by contrasting the goal of the City to the profit motivation of WestWorld management. As non-recreational ventures developed at the park become more profitable, WestWorld management's incentive to promote public recreational concerns may diminish. WestWorld management stated during the audit that private parties catered at the park were much more profitable and less stressful than more high profile events. These high profile events may generate less revenue for WestWorld but tend to result in more tourist activity for Scottsdale.

**City review and approval
of development needed**

The contract provides a mechanism to review the appropriateness of proposed development at the park. It states that activities and proposals contained in exhibits are merely representative of the types of activities and uses considered for the park. Specific approvals are necessary from the City and Reclamation prior to construction. Neither procedures to ensure that proposed development is submitted to the City for approval prior to construction nor the criteria needed to judge the proposal have been developed.

After award of the contract, as a requirement of the management plan, WestWorld management prepared a conceptual master plan for development of Phase Two. This master plan was completed and approved by both the City and Reclamation in April 1988. City staff indicated that the intention of the master plan process was to create a conceptual design which would be the basis for review and approval of projects as each was developed.

This is not how the plan has been implemented. Instead, it has been considered by WestWorld to be the City's blanket approval of park development, as long as the proposed development "adheres" to the conceptual master plan. For example, the construction of the restaurant and banquet hall as well as the planning of the proposed amphitheater were all accomplished without City review and approval of the projects other than the development review process and administrative plan review process required prior to obtaining building permits. No independent determination was made to ensure that the operation of the amenities met the criteria established in the land use agreement, specifically recreational use or support of that use. Timelines for construction of the development outlined in the master plan were not required prior to approval of the plan nor was there a requirement to submit financial data regarding construction or operation of the amenities included in the plan.

**Enforceable development
timetables needed**

During City Council review, staff stated that the contract contained timetables to ensure construction of the covered arena, bridge, and Phase Two. Of these items, only the construction of the covered arena had an adequate timetable. Completion of the bridge and start of construction of Phase Two both have timetables but the clock is controlled by WestWorld management. For example, the timetable for construction of the bridge is as follows:

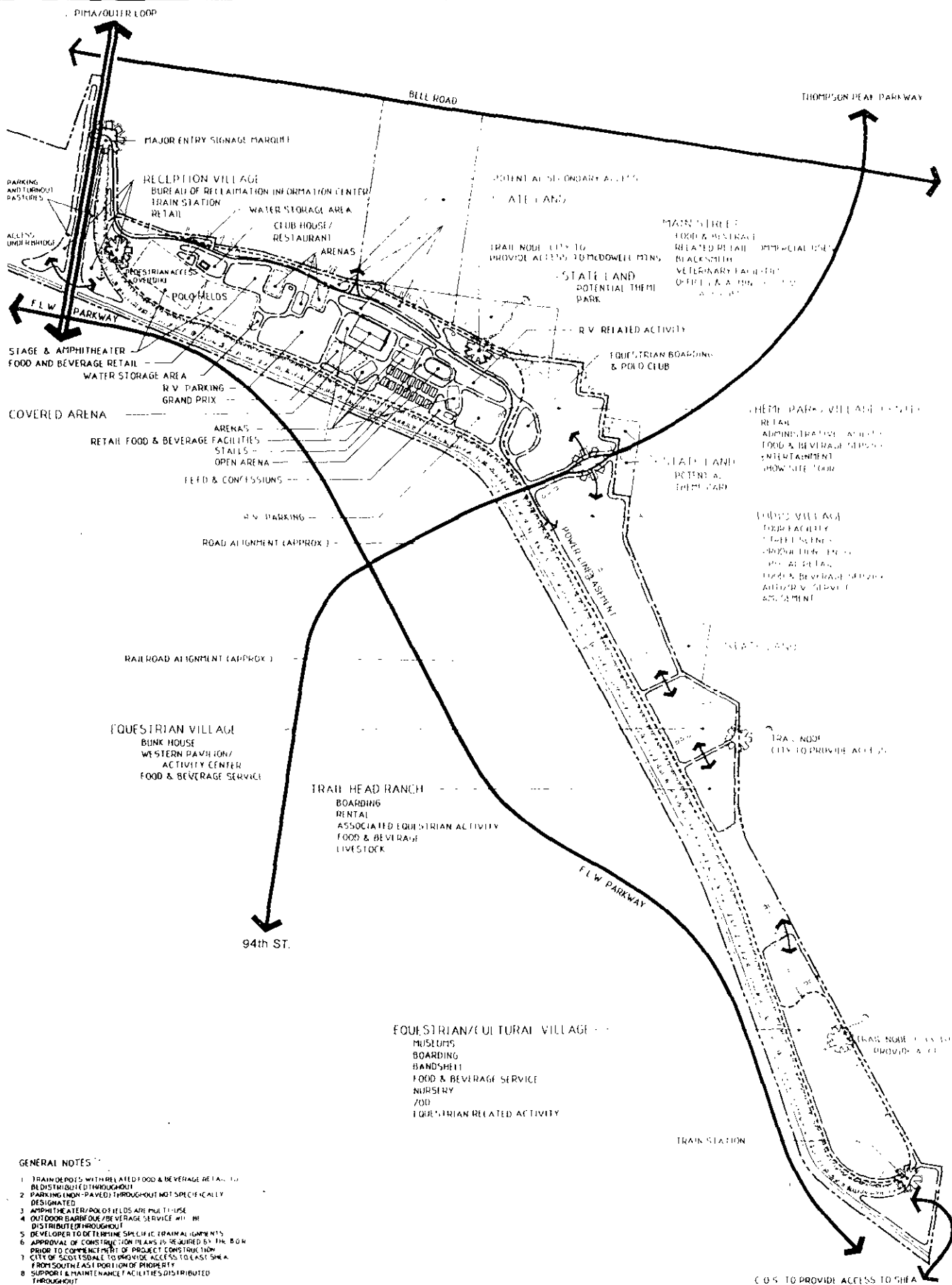
Construction of said bridge shall begin within two years of final approval of construction plans by the Bureau of Reclamation.

The contract does not specify who is responsible for developing, submitting, and obtaining Reclamation approval. Therefore, WestWorld management has stayed the clock by simply not pursuing design and construction planning of the bridge. The timetable for construction of Phase Two is similar, stating that it must be started within two years of the completion of the bridge. The contract is silent on when the bridge, even if started within two years of Reclamation approval, must be completed.

In order to start the timetable for construction of the bridge, the City authorized \$315,000 of Capital Improvement Project funds during Fiscal Year 1991-1992 to study the issue. After

EXHIBIT 2

Approved Conceptual Master Plan



G. WILLIAM
LARSON
ASSOC., INC.

HORSEWORLD MASTER PLAN

SCOTTSDALE, ARIZONA

PREPARED FOR: THE K-LIN CORPORATION



APPROVALS
BUREAU OF RECLAMATION
CITY OF SCOTTSDALE
APPROVALS TRANSFERRED
FROM 1"=200 SCALE PLANS

12-30-87
8734
SJV
3-22-88
4-21-88

completion of the study, more funds and City staff time will be needed to design the bridge and obtain Reclamation approval. Even if the City continues to commit the resources necessary to obtain Reclamation approval of the bridge (a process estimated by City staff to take 2-3 more years), WestWorld management will still not be required to begin construction for two more years.

The bridge is considered by City staff to be an important part in developing the park and private land to the north of the facility. Traffic flows during larger events have already placed a hardship on available streets. The projection is that existing streets will not handle further growth at the park. Currently Pima Road is the only available route to land north of the park. Access to this region would be improved if the bridge could be connected to the planned Thompson Peak Parkway.

K-Lin management acknowledged the importance of the bridge during the solicitation process when they recommended delaying the construction of the enclosed arena:

...until a secondary ingress and egress route is developed, the ability to handle traffic generated by a 16,000 seat arena or a Phase Two commercial operation, will prove difficult and potentially hazardous. (96 Street Overpass)

WestWorld management does not deny its responsibility to build the bridge, but holds to the position that it is not economically feasible at this time. Other issues related to the location of the bridge as well as to Reclamation requirements regarding bridge type and City requirements for access are also held out by WestWorld management to be stumbling blocks in bridge construction.

**City protection important
should developer default**

The contract does not require WestWorld management to provide a performance bond, line of credit or any other form of surety protecting the City if the contract were terminated. This places the City at financial risk to supply requisite funds to operate the park or commercial facilities during any interim period while either searching for a new developer or planning to operate the park itself. This potential exposure needs to be addressed prior to the approval of each aspect of future development. The

opportunity may be available prior to approving future development, if sub-contractors are solicited to provide the service, or in a future contract addendum.

Reassertion Of City Responsibility Towards Development Needed

While the contract with WestWorld may be a relatively ineffective tool in monitoring the development at the park, options are available through the land use agreement with Reclamation to ensure that future development meets the park intent. The land use agreement requires the City to supervise, control and administer the park for outdoor recreational use. Even though the City has subcontracted the park management, it still has the obligation to comply with the provisions of the land use agreement. By fulfilling its obligation under the land use agreement, the City can also help protect the City's interest in the development, management and operation of the park.

City performance under the land use agreement

The City has a duty under the land use agreement to review the operational and financial aspects of the proposed development as it relates to the intent of the park. By proviso in the land use agreement, the City may subcontract with third parties to develop, maintain or improve the park for public recreation purposes. According to Reclamation, it is the City's responsibility to ensure that activities of the subcontractors fulfill the intent of the land use agreement. Reclamation management does not consider that the City has been properly fulfilling this duty by cursory reviews of the proposed development, and little or no review of park operations. One step the City has taken to strengthen its performance under the land use agreement is the establishment of a contract officer position. This position has the responsibility for monitoring the City's compliance with the land use agreement as well as monitoring the developer's compliance.

Reclamation's review of development has been focused on assuring that the plans meet its construction requirements related to flood protection. The contract provides that Reclamation must approve any development prior to construction to ensure that it meets with the recreational use of the park or provides support to the facility. However, Reclamation has not requested information regarding the operation of the facilities prior to the approval of the construction and, in fact, has continued to let facilities operate without approved plans or fee schedules. According to

Reclamation staff, it is the City's responsibility to ascertain the operational soundness of proposed development at the park prior to requesting Reclamation approval.

To date, discussion regarding the appropriateness of the construction of a restaurant and banquet hall the size of those at WestWorld, has been raised by other commercial interests. The discussion hinges on whether it is a needed support facility or whether it is a commercial facility on federal land which would have been more appropriately constructed on private land outside the park. WestWorld management maintains that the size of the restaurant was determined by the turnout at the Scottsdale Arabian Horse Show and predictions of activity once other amenities such as the amphitheater are added. Reclamation and the City have responded to these concerns stating that food and beverage concessions at the park were considered to be an appropriate support facility.

Reclamation staff indicated that allowances had been made regarding the restaurant's operating hours because it would be difficult to staff and operate the facility on a transient basis. Further, Reclamation acknowledged that both the restaurant and banquet hall have been allowed to remain open without approved operational plans and the appropriate revisions to the management plan. Reclamation staff went on to state that future approval of development at the park would not be given until items such as these were cleared up.

The conclusion that these facilities fulfilled a needed support function at the park was not based on an objective review. Criteria which would be needed to make such an informed conclusion has yet to be developed. Operational plans for the facilities have not been requested by City staff nor has there been any information gathered such as surveys of restaurant patronage during events compared to patronage when events are not being held.

When comparing total revenues, the restaurant/catering business is the driving force of the operation. During 1991, it generated more than \$1.8 million in revenue compared to the \$.8 million from facility rental. Additionally, of the 381 events held at the park in 1991, more than 75 percent were private parties catered by WestWorld management. While some of these parties may

have been related to events held at the park, parameters have not been set to monitor this type of activity.

City involvement in future development needed

The ability of this project to reach the financial expectations promoted during the contract solicitation and award process hinges on the ability of WestWorld management to develop Phase Two of the Park. Pannell indicated that the equestrian facilities would not generate an adequate return for the developer, resulting in reliance on the commercial, service and theme park facilities to provide profitability. The need of WestWorld management to develop revenue generating activities and favorable financing arrangements may not always match the City's desire for the park to be a premier destination attraction or the intent of the land use agreement.

Active City participation in park development is needed to ensure that the proposed projects meet expectations. It is also required to protect the City's investment in the park and its relationship with Reclamation. For example, WestWorld management asserts that the financial success projected for the park will occur once the amphitheater (currently in the planning stage) is operational. City staff have not reviewed these plans or questioned the financial arrangements of any solicitation for investors. Documentation submitted at various times during the design review process indicated that there have been at least two different potential investors involved in the project to date, but the City has yet to be provided information regarding the investors or financial arrangements sought. Review of the proposal sent by a potential investor in 1989 suggested different financial arrangements ranging from a straight percent of gross to equity share based on return of capital invested. Because these financial arrangements can affect revenues, they should be considered by the City prior to granting any type of project approval.

Periodic review of results of development needed

Adding to the uncertainty of project success is the question of whether the development to date and proposed future development will generate sufficient revenue to cover the cost of operations and debt service. According to WestWorld management, current debt resulting from construction of the restaurant and banquet hall is approximately \$8.3 million. According to financial information prepared by WestWorld management, the initial year of restaurant

operations resulted in a loss of more than \$740,000 not including debt service. WestWorld management stated that the restaurant was beginning to turn around and they expected 1992 to end in a much stronger position. Financial information submitted by WestWorld management for the first six months of 1992 indicate that the restaurant is still experiencing a negative cash flow.

Both City and WestWorld management acknowledge that WestWorld (and groups associated with financing the development) assumed the greatest portion of risk for the project. The City's risk is limited to the fact that revenues generated by the park might not reach those originally projected. The City does, however, have the ability to reduce the risk associated with park revenues by becoming aggressively interested in the financial well being of WestWorld and the ability of the organization to continue operating. As long as WestWorld continues to financially support unprofitable operations, funds generated by profitable operations of the park (i.e. facility rentals, rental stable concessions etc.) will not be available for reinvestment in additional park development.

CHAPTER TWO

WestWorld Contract Compliance
City Auditor Report No. 9103

Compliance With Contract Terms

The City's routine oversight of WestWorld management could be strengthened to help ensure compliance with contract terms. This strengthening would help protect both City and Reclamation interests. The land use agreement created a federal stake in safeguarding assets at the park as well as assuring public access to the area. These issues could be more aggressively managed.

In an effort to be good partners and recognize that flexibility was needed during the initial years of a project as big as WestWorld, both the City and Reclamation allowed park management a certain latitude. Although these actions may have been appropriate during that time period, continuing such practices could lessen the City's ability to ensure that the vision of a first-class equestrian center and destination attraction will be fulfilled.

Park financial arrangements and expansion

The planning, design and development of the park took place in several stages. In the first stage, during the early 1980's, the City and Reclamation worked cooperatively to develop the land use agreement. Reclamation committed \$230,770 to help fund start-up construction costs and the City allocated a budget of \$515,000. This resulted in the planning, design and construction of "Horseman's Park," as the relocation of Cholla Park. Most of the work for this stage was completed in August 1983 and from that time until the privatization in 1986, the park was operated as a City park. When the park was privatized, facilities constructed as a result of this phase were designated a "public park area" within the larger park itself.

In addition to the infrastructure and arenas constructed by the City, a duplex building was donated and relocated at the park to serve as a clubhouse. Other materials were also donated by local horse groups and relocated to the park. As construction was completed, the City received reimbursement for Reclamation's share through documentation and request for payment submittals. The account with Reclamation was closed when a ramada was completed in July 1987. A review of these records found that the City did not re-submit a progress billing for expenses incurred prior to the completion of the ramada. Consequently, we were not reimbursed \$4,425 from funds available.

Construction costs increased

Initial construction projections submitted for the park reached more than \$20 million. However, funds approved during the 1985 bond election totaled only \$6 million. In order to bring construction projections in line with available funds, items such as the covered arena were deleted and the number of permanent horse stalls was reduced. Additional funds from City General Obligation bonds, Capital Improvement operating funds and the General Fund were used to bridge the difference. By the time the facility was privatized, total construction cost was estimated to be \$10.6 million. This amount includes about \$.5 million in change orders that resulted in a lawsuit between the City and the general contractor.

***Park improvements
not owned by the City***

To support WestWorld management's development efforts, the City agreed to a below market use fee at the park. A two percent gross receipts fee was considered favorable but justified because WestWorld management would be assuming the financial risk necessary to continue the development of the project. As an extended effort of support, the City relinquished any claim to the improvements constructed on the property by WestWorld management. At the end of the contract term, or sooner should the contract be terminated for any reason, WestWorld management may remove, assign, sell or otherwise dispose of any improvements not specifically dedicated to the City. Should the City wish to acquire any of the improvements made subsequent to the privatization, staff would need to negotiate arrangements with WestWorld management.

***Improved contract
administration enacted***

Oversight of the WestWorld-related agreements has been strengthened within the last year. On July 1, 1992, a Contract Officer was appointed to assume oversight responsibility of both the Tournament Players Club and WestWorld contracts. This position reports directly to the Management Services General Manager and acts as the City liaison to Reclamation, WestWorld management and the Tournament Players Club/WestWorld/Stadium subcommittee of City Council. The subcommittee, consisting of three Council members, meets once a month or as needed to review and discuss items related to the park. The meetings are open to the public and notices are posted as required.

Prior to July 1, 1992, contract administration was the responsibility of the Community Services General Manager who was the Contract Administrator. The Special Projects Manager in the Community Services Department was responsible for ensuring that the contract requirements were met. The department accumulated activity data and verified the comparability of fees. The Special Projects Manager had other administrative duties which placed constraints on the time available to perform contract administration. The lack of continuity in the development of the contract and prior administrative duties resulted in different interpretations of the City's role in the park. Additionally, there had been little coordination among the various City departments regarding decisions affecting the contract.

The restructuring created a central point where all requests relating to WestWorld could be directed. The Contract Officer's duties involve only administration of the WestWorld and Tournament Players Club contracts, thereby allowing him to become more familiar with terms, compliance issues and activities at both facilities. It also provides continuity in the relationship with Reclamation.

**Revenue reporting controls
could be improved**

As required by contract, WestWorld management maintains requisite financial records in accordance with generally accepted accounting practices. These records can be used by the City to monitor reported revenue. While City scrutiny of the records has been limited in past years, few discrepancies were found during this review. Our analysis identified unreported revenue at about \$2,400 for the three-year review period.

Food and beverage concessions represent a significant portion of park revenues. The City's ability to track these revenues and analyze related WestWorld records could be improved by requiring that supporting documentation such as register tapes and event folders be maintained and made available. Similar document management issues face transient revenues such as horse stall and RV space rental income.

Currently, concession revenue records consist of handwritten summary reconciliations without register tapes. WestWorld management maintains event folders which serve as a record of activities, but these documents do not indicate the total number of concessions operated on days when multiple events take place.

**Subcontract approval
should be emphasized**

During the course of operations, WestWorld management entered into various subcontracts for services or commercial use of the facilities without obtaining the prior approval of the City and Reclamation. To help ensure quality recreational uses at the park, the contract requires WestWorld management to obtain Reclamation approval of all subcontractors that provide various "Theme Park" activities. However, past procedure has not ensured that the required approval is obtained prior to start of the activity at the park.

This approval process is important because it allows the City and Reclamation to review the activity and the proposed subcontractor to ensure that the activity meets the recreational intent of the park or provides a needed support function. During the course of operations, WestWorld management has actively pursued various subcontract services and commercial uses at the park. Many of these arrangements were started before Reclamation approval was granted.

In 1988, Reclamation started a review of two non-recreational ventures. These ventures closed because of concerns raised regarding the appropriateness of the use under the terms of the land use agreement as operated. Since that time, one other non-recreational venture was approved on a trial basis. After the end of the trial, Reclamation declined to approve the subcontract. Another subcontract, one for bungee jumping at the park, was presented for approval during the course of this audit, but was declined. Two subcontracts, one for the riding stable and one for the operation of a polo group, were approved in 1991.

The approval process needs to be strengthened to provide the City the opportunity to gauge WestWorld management's ability to fulfill their obligations under the two percent use fee proviso. In these and other instances involving long-term facility rentals, the City's two percent use fee has not always been fully recognized. City staff stated that the intent of the contract was that all "non-transient" revenues generated at the park and from developer activities on land associated with the park would be subject to the two percent fee.

With earlier subcontract arrangements, WestWorld management routinely submitted the two percent fee on rental revenues but not on the renter's gross receipts. However, when the subcontract for

the riding stable was presented to the City for approval, the City required a memo of understanding that the City would receive two percent of the gross receipts from the riding stable, not two percent of the rent paid to WestWorld. The procedures in place do not ensure that this understanding is incorporated into all other subcontracts. For example, the polo group subcontract does not contain a proviso relating to payment of the two percent of the group's gross receipts.

Other types of rental agreements used by WestWorld management do not recognize the two percent fee, either. Activities such as bungee jumping, where a commercial business venture rented part of the park on a weekend to weekend basis, and event-to-event contracting with concessionaires to provide food service reduced payment to the City. The two percent fee was based on the amount of money paid to WestWorld management for rent (a flat fee) and not on the gross receipts earned at the park.

**Monitoring of fee
schedule needed**

The land use agreement prohibits discrimination at the park in any form or fashion. This includes ensuring that use fees are collected without prejudice. Reclamation representatives stated that their concern does not center on the fee, or its lack, but only on ensuring that all individuals or groups are afforded the same opportunity to use the park at the same rate for similar services.

The mechanism designed to help forestall any suggestion of impropriety or fee discrimination centers on the creation of a formal rental fee schedule. While this instrument is currently available, it could be more fully implemented. During our review of event folders, we found numerous instances where actual rental rates differed from the approved schedule. We also noted various add-on charges for services such as clean-up, lighting, damage repair, and equipment rental and movement. "Personalized" facility alterations were found to be negotiable items that were added to base fees or supplied on a *gratis* basis absent any mechanism to ensure that all parties interested in using the facility were provided the same opportunity. Food service concessions were handled in a similar fashion.

Some organizations were given the opportunity to rent the facilities at a bulk rate. The fee schedule, approved by the City and Reclamation does not include this type of rental arrangement.

Other organizations are allowed to contract for the long-term use of the polo field and horse stabling at rates lower than those offered to others during the normal course of business.

In some situations, bulk rate facility rentals may be effective. Reclamation generally recognizes a need to address issues such as these when they are presented for consideration. Such usages should be documented to ensure that everyone is given the same opportunity at the park.

To verify non-discrimination compliance issues, we asked WestWorld management to provide copies of rental contracts. This request was denied. Access was given to review the contracts on the premises, but copies were not provided. WestWorld management stated that they did not believe that it would be in their best interest for other groups or their competitors to know what types of agreements were being made at the park. This posture and the individualized negotiations for the use of the park does not comply with the land use agreement. The fee schedule was approved by the City and Reclamation and is a public document.

**Usage of public park area
could be enhanced**

The public park area at WestWorld consists of a main arena, warm-up arenas, and a concession/clubhouse. The contract requires that rental fees for the public park area adhere to rates established by City ordinance. It goes on to state that the area will be available for individual use at nominal cost when not in conflict with other scheduled events.

During early contract negotiations, City personnel planned to staff and maintain the 25-acre public park site themselves. WestWorld management felt that would be difficult because access to the area was funneled through the only entrance to the park and would be a problem during events. City personnel were persuaded to allow WestWorld management to staff and operate the area's public park facilities provided that the improvements made at the park with federal funds would be available for public use. In correspondence to Reclamation to justify the use of cost-sharing funds for the construction of the concession/clubhouse, the City represented that the building was not going to be used as a concession building by a private contractor. The intent of the building and attached ramada was that of a meeting place, kitchen

area and bar-b-que facilities for local clubs to hold gatherings. Currently, the concession/clubhouse building is used as storage and as an ancillary support building for WestWorld's other concession operations. Local groups do use the arenas and the ramada for club activities but are prohibited from doing self-catering. These practices are controlled exclusively by WestWorld management. Availability and rates are not contained on the park's published schedules.

**Operations monitoring
important**

One of the benefits of privatizing the park centered on relieving the City of duties associated with managing the day-to-day operations of a facility the size and potential complexity of WestWorld. While site management duties were assigned to the developer, the land use agreement and the contract contained several provisions designed to allow the government partners to monitor activities. Several of these mechanisms could be enhanced, enabling the City to serve better the public usage of the park.

***Use of facilities
needs to be reviewed***

The park offers a number of different types of facilities. Structures built prior to privatization were planned for recreational usage or as support facilities. Periodic monitoring and continual review of the appropriateness of the use of the facilities would help ensure that the documentation and appropriate approvals have been received. For example, prior to privatization, the City designed and built RV parking spaces for use by attendees to events at the park. During the Council meeting evaluating the contract, one Council member queried why the RV parking was not addressed in the ordinance governing the park. The Mayor stated that the usage of these spaces would be only for participants in equestrian events.

In an effort to increase the park use, WestWorld management has actively promoted the use of the park as a RV camping facility. The availability of the RV parking has been advertised in publications and flyers for general public use at all times. When concerns were raised regarding the use of these spaces, WestWorld management approached the City and Reclamation for approval to operate the RV park as extended usage of up to eight consecutive months. This concept was denied by Reclamation stating that federal regulations prohibited individual

use greater than fourteen days in any one month. Reclamation also notified both the City and WestWorld that use of the RV spaces, when not in conjunction with scheduled events, was in violation of the agreed upon park operations.

WestWorld management continues to operate the facility as a RV campground. After close of audit fieldwork, Reclamation notified the City that the use of the RV facilities for camping which was not supporting participation at scheduled park events must be stopped immediately.

Proactive monitoring of facility use combining review and any necessary revisions of the approved operations at the park would help avoid possible violations of the land use agreement. This would ensure that all parties are in agreement as to the operations at the park. Reclamation representatives stated that they are not opposed to considering a change in the use of the RV spaces but that until a proposal is submitted and approved, the use must agree with what has been approved.

Added review of new construction and amendment of management plan needed

Both the land use agreement and the contract anticipated future development at the park. To ensure that the development continues to be in compliance with the land use agreement, a specific approval process is delineated. This process has not been used in the past to assure that the development and operational plans of new facilities meet the recreational goals of the park or provide related support. The facilities that have been built by the developer need to be reviewed and the appropriate revisions to the management plan made.

Reclamation representatives stated that it is the City's responsibility to be actively involved in the development and monitoring of the facility operations at the park. The City must assure that the appropriate approvals are obtained and operational plans are prepared. Reclamation has stated that they have allowed a certain amount of latitude in operation of the park because it is a project that they do not have a similar project with an established history to draw upon for direction. However, Reclamation representatives indicated that the project is starting to reach a point where the experimental phase should be concluded. The City and WestWorld management should consider the option of developing written procedures to ensure that future

development meets Reclamation's requirements. These procedures should include steps to ensure that the management plan is reviewed for any necessary revisions prior to the approval of proposed development. Implementation of procedures such as these would result in the development of operational plans and criteria for the management of the facilities prior to the actual development. The City could then use these plans and criteria as the basis for monitoring results of operations at the park.

***Monitoring of reservation
system required***

One issue that concerns Reclamation is the availability of the park and the opportunity of all individuals to have the same opportunity to enjoy it. However, Reclamation also recognized the need of WestWorld management to be able to reserve part or all of the park as a function of renting the facility for various events. In an effort to work with the needs of both organizations, the contract stipulated that WestWorld management could implement a reservation system. The management plan was the instrument used to document the policy. The reservation system developed by WestWorld management states that large commercial events may request a block of days on a yearly basis. In addition, other events and individual riders will be accommodated on a "first come-first serve" basis.

The implementation of an advance reservation system creates a compliance issue that the City must monitor to ensure that the park does not discriminate among groups or individuals for more desirable dates to use the facility. For example, without an effective reservation system, the park (or portions of it) could be rented to the same individual or group every weekend without giving other interested parties an opportunity. To date, procedures which would enable the City to monitor the use of the system have not been developed.

Cost identification needed

The land use agreement requires that fees charged for entrance must be used to pay for management, maintenance or improvements at the park. Other income is not restricted and may be used as needed or desired.

In order to ensure that both the City and WestWorld management are complying with this requirement a mechanism is needed to identify all revenues earned at the park as a result of fees to use

the facilities. Procedures would then need to be established to periodically monitor WestWorld's expenditures as related to the revenue generated.

To protect the City's ability to use the fee received from WestWorld, without question from Reclamation, procedures need to be developed to track use fee revenue from restricted and unrestricted sources separately. Without tracking, more monies may be attributed as restricted revenue than actually would need to be. However, when the success of the park reaches the original projections it will be advantageous to have the flexibility to spend the unrestricted revenue for other City needs. This option will only be available if revenue and expenditures by the City related to the park are tracked separately throughout the life of the project.

**Safeguarding of City owned
assets could be improved**

Prior to privatization, the City invested more than \$10 million in improvements at the park. The majority of this investment was in grading and infrastructure. Other improvements included fencing, arenas, equipment and office furniture. When the park was privatized, the facility was turned over to WestWorld management without an inventory of improvements/equipment provided with the park. Without such an inventory and periodic verification of continuing existence, the City is unable to ensure that all assets on loan at WestWorld are adequately safeguarded.

**Acknowledgment of
Reclamation participation**

The management plan requires the City to ensure that Reclamation's participation in the development of the park is acknowledged. All three partners agreed to the erection of a sign with prominent display but it has yet to be accomplished. In order to be in compliance, the City should work together with WestWorld management and Reclamation towards the development and installation of an appropriate display to acknowledge the partnership at the park.

CHAPTER THREE

WestWorld Contract Compliance
City Auditor Report No. 9103

Contract And Procedural Improvements Available

Together, the land use agreement and the contract create a long-term partnership including the City, Reclamation, and WestWorld management. Activities surrounding the park will transcend several generations of management of all parties. Some improvements are needed to the contract and to other procedures to ensure an amicable relationship over the long-term. Discussion regarding these improvements can be divided between those issues related to safeguarding the City's assets and those involving contract performance. To help ensure long-term continuity, strategies governing inevitable WestWorld management changes and the transfers of ownership interest are discussed.

Improvements in safeguarding City assets

The park is a valuable City asset. The significance of this asset takes several forms which all need to be safeguarded. The most difficult to safeguard, because it is not directly controlled by the City, is the revenue generated at the park. This is an asset because it directly affects how much is paid to the City in the form of a use fee. Another asset, representing the City's large investment in the park, is composed of the physical improvements, facilities and equipment effectively loaned to WestWorld management during the contract term. These assets are more easily monitored through the establishment of procedures that would periodically verify asset existence.

The most valuable asset is the land use agreement itself. It is valuable because it gives the City virtually free access to 400 acres of land for several generations. This asset, while not as susceptible to periodic losses as the other two, requires the most stringent efforts to protect because the use of the land can be withdrawn by Reclamation if the City does not fulfill its obligations. Improvements in the contract and its administration are available and will help ensure that City assets are diligently protected.

Revenue classifications require clarification

During our audit, questions relating to the determination of revenue for inclusion in the use fee calculation were raised. Concerns were expressed regarding the calculation and the source of park revenue because, historically, limited information had been made available by WestWorld management.

The contract requires a payment to the City based on two percent of the gross receipts earned by the Joint Venture. However, the structure of rental contracts can affect the calculation of gross receipts. Rental contracts can be structured to:

- 1) rent the facility and allow the event organizer to arrange for food concessions, stall rentals, vendor concessions, and other ancillary revenue;
- 2) rent the facility and arrange for concessions at either a flat rate or a percentage of gross receipts;
- 3) rent the facility and require the use of WestWorld-provided food and beverage concessions, security and equipment rental.

Under the three options, the same event could be staged at the park, but result in a different calculation of gross receipts.

The structure of payments to vendors for services provided to users of the park can also affect payments to the City. For example, if the rental contract provides for security, food and beverage catering, and tents to be provided by park management, the payment to WestWorld management will be greater than that of a rental contract that is structured so that security and tent rental fees are paid directly to the vendor. If these services are provided by WestWorld management, the revenue would be included in the calculation of the two percent use payment to the City. By allowing the user to pay the vendor directly, the revenue is not included.

Other arrangements can also affect the calculation. WestWorld management has interpreted the definition of gross receipts to exclude the repayment of funds advanced by WestWorld on behalf on park users. During our review, we found that the contract with the Arabian Horse Association of Arizona was structured so that \$57,000 each year was attributed to the repayment of fixed asset improvements made by WestWorld. This, in effect, reduces the payment to the City by \$1,140 each year of the horse show contract.

Because the use fee is a City asset, anything which affects the calculation should be addressed, understood and clarified. The

City needs procedures in place which will ensure that it is receiving the appropriate use fee. At the same time, WestWorld management needs some flexibility in negotiating arrangements at the park. The solution may not be an easy one to develop but in an effort to ensure that the needs of both parties are being met, all parties need to understand and agree to the calculation methods being employed.

***Asset management
issues need attention***

Prior to privatization, the City made a significant investment in physical improvements such as drainage, grading, sewer, and other improvements such as fencing, arenas, stalls and equipment at the park. In effect, these improvements were loaned to WestWorld for park use. As a means of protecting these assets, the contract requires WestWorld management to maintain the park in first class condition. However, the contract does not specifically require WestWorld to implement a maintenance program or to obtain City approval of any repairs, maintenance or renovation occurring at the facility. The City can best protect its investment by becoming actively involved in monitoring the maintenance, improvements and renovations made at the park.

As a means of protecting the City's investment, the contract requires WestWorld management to maintain insurance on the facility. However, the contract provides that any insurance proceeds or condemnation awards be used at the sole discretion of WestWorld management to repair or replace damaged items at the park. Any proceeds remaining would be owned by WestWorld management. The City has no assurance that improvements originally made and owned by the City would be protected when the decision is made to repair or replace facilities covered by insurance.

While exploring options to protect these assets, consideration should be given to implementing procedures to ensure that disposition of park assets follows appropriate legal requirements. City Charter requires assets to be disposed of through the Purchasing Department. Assets purchased under the land use agreement would also need Reclamation approval of the method of disposition. Adhering to these requirements is made more difficult because federal and City funds were used to purchase some of the improvements. A mechanism is needed to ensure that any City-owned assets no longer needed at the park are returned.

At the same time, the City must help ensure that improvements purchased with federal monies are either retained at the park or sold, transferred or otherwise disposed with Reclamation approval.

City responsibility under the Land Use Agreement

The largest asset at WestWorld is the park itself, as represented through the land use agreement. The City responsibility to Reclamation is significant: it is ultimately responsible for protecting the asset. Should Reclamation feel that the City is not diligent in monitoring the park and continuing to strive to fulfill the requirements of the land use agreement, the City could be exposed to premature termination of the land use agreement. There are several requirements in the land use agreement that the City must monitor as a means of assuring Reclamation that it is fulfilling its obligations even though these requirements may currently be controlled by the developer.

Access to financial records could be strengthened

The land use agreement requires the City to maintain documentation on park activities and operational results. Presumably, Reclamation uses this information to ensure that all requirements of the land use agreement are being fulfilled. This obligation applies to subcontracts entered into by the City. Currently, the City is not maintaining information regarding the operational results of WestWorld.

In order to monitor park rental contracts and use fees, the City would need access to WestWorld management's books and records. The contract requires the developer to allow the City to inspect the books and records of the Joint Venture, but does not require WestWorld management to provide copies of documents. WestWorld management has interpreted this contract provision to mean that the City has the right to look at records, but not to remove copies. Further, access to records of other entities operating at the park is also limited by WestWorld management.

Without an effective mechanism to ensure that it is given needed documents, the City will be open to criticism by Reclamation and other interested parties about its oversight.

***Fee determination and approval
process improvements available***

The land use agreement specifies that Reclamation and the City must agree on all entrance and use fees and that the fees must be reviewed at least once every five years. The contract states that WestWorld management would establish a fee schedule which was to be approved by both the City and Reclamation. There is also a provision for periodic increases. Additionally, the contract states that approval of the fees would not be unreasonably withheld. However, both the land use agreement and the contract are silent regarding the standards and procedures used to establish fees.

In order to work with the requirements of both agreements, WestWorld management developed a fee schedule which was submitted to the City for approval. City staff then prepared a comparison of rates for Council review and submittal to Reclamation. As a means of justifying the fees, comparable facilities were selected and surveyed. However, the comparable facilities were selected using subjective criteria developed by Community Services Department staff. Both facilities used in the comparison were located out of state. City staff acknowledged "though the fees are competitive on a national basis, they are a little high in the Arizona market." There is no detail available to support the facilities selected or to explain the exclusion of statewide or local facilities.

After establishing the initial fee schedule, the City did not participate in any discussion to develop objective criteria or procedures to periodically review the appropriateness of the fees. No plans were developed to periodically survey the local, state or national market in an effort to identify new facilities which may be appropriate for comparisons. Because the fee schedule is due for review, the City should initiate this discussion at the earliest possible time. In conjunction with this review process, objective criteria used in establishing the fees and periodic reviews of fees in the future should be developed. These efforts would help the City avoid criticism from Reclamation.

While developing procedures to review the fees, other options are available to determine the fee appropriateness. While the use of comparable fees may have been appropriate initially, the use of this method may not be the most appropriate now that a financial track record has been established at the park. Other methods which would result in fees more directly attributed to the cost of operating the facility would help ensure that use fees and other

charges related to using the park are not subsidizing non-profitable ventures. For example, according to 1991 financial information prepared by WestWorld management, revenues generated by the rental of the facility, after considering directly related expenses, contributed more than 90 percent of funds used to support the Joint Venture administrative costs. This source of revenue only accounted for 30 percent of the total revenues.

By developing a mechanism to set the rental fees and related charges equal to the costs associated with the rental activity, the City could ensure that use fees do not subsidize other activities. By including an appropriate allowance for administrative overhead and management fees, the City could determine whether the rental fee was appropriate. Such a practice would better protect the City against potential claims that fees are arbitrarily set or unnecessarily exclusive. Furthermore, both the City and Reclamation would be assured that the revenue generated from the recreational activities at the park were not used to subsidize the non-recreational ventures of WestWorld management.

**Establishment of a capital
reserve warranted**

In the past, the City has provided, through the budget process, contingency funds to cover unforeseen occurrences such as extraordinary repairs or fluctuations in revenues. When the park was privatized, the need for available funds to cover such occurrences was not addressed. The establishment of a cash reserve by WestWorld management would serve to protect both the City and the Joint Venture should the need for extraordinary repairs or improvements occur.

Currently, improvements and repairs are made as funds are available. Insurance proceeds would also be available should repairs be necessary as a result of damage caused by events such as fires or storms.

Funds necessary to perform repairs or improvements not covered by insurance may not be available from current operations. The land use agreement requires the City to maintain the park by making any and all necessary repairs. The City has, through the contract, assigned this responsibility to WestWorld management. Currently, the City does not have any assurance that monies will be available when needed and does not have any input as to the priority placed on repairs or improvements. Without a

mechanism to ensure that funds will be available to cover unforeseen costs, all parties are open to disagreements regarding financial responsibility and priorities.

Performance Measures Needed

Expectations for the management, operation and results of the park have been discussed by Reclamation, the City and WestWorld management. While these expectations may be clearly understood by all parties involved in the privatization, the long-term nature of the contract and the potential for change in personnel involved suggests that a more documented approach should be taken to ensure that management and operation of the park is consistent with expectations.

In order for the City to properly evaluate park results and the efforts of WestWorld management, performance measures need to be established and agreed to by involved parties. After establishment of criteria, a means to identify, capture and analyze the data needed to evaluate performance should be developed. Currently, performance measures contained in the contract are specifically directed towards park upkeep. The measures are vague and subjective, requiring maintenance to be "first class" without definition. This places all responsibility for decisions about repairs, improvements and replacement of equipment on WestWorld management without an effective measurement or remedy if the performance does not meet or exceed the City's level of expectation.

Other performance measures such as targets related to the number and type of recreational opportunities presented at the park, public use of the public park area or park attendance currently are not addressed in the contract. Other than the annual use report required by the land use agreement, the City has no mechanism to capture data regarding the level of park activity. Some data has been provided in the past at WestWorld's discretion; however, the City has no means to ensure that future data will be shared.

A combined effort by all parties could result in a format which could be used by Reclamation, the City and WestWorld management to evaluate performance, verify information and make decisions involving future projects. To this end it is important that all parties understand how the information is being gathered and how it is derived to avoid misinterpretations of the results.

City's Interest Should Be Protected If Contract Disputed Or Dissolved

The privatization of the park created a long-term relationship between the City and WestWorld management. Because the term of the contract could reach 75 years, all parties should consider the possibility that the current amicable relationship might not always exist. Both the City and WestWorld need to consider the possibility of unresolvable disputes at some point in the contract life. Currently, the only method available to resolve such disputes would be the pursuit of a legal remedy. This could be a costly and lengthy option for both parties. However, there are options available which could be used to ensure against such a possibility. The establishment of an arbitration clause in which both parties would agree to using an independent arbitrator (or panel) could provide a more cost effective and responsive resolution to disputes.

Arbitration clauses have been used in other contracts such as the privatization of the water treatment plant with Scottsdale Water Service Company.

Additionally, both the City and WestWorld management need to plan for the inevitable change in ownership and management of WestWorld that will come during the lifetime of the contract. Currently, the ownership of the joint venture operating WestWorld is vested in privately held corporations. The retirement, death or disability of the stockholder of the private corporation could result in change in the ownership or management of WestWorld or in the worst case, be tied up in litigation proceedings among heirs.

The City and WestWorld management should consider options available such as the establishment of a "right of first refusal" buy-out clause which would document the City's right to purchase the stock of the corporation upon the death or disability of the stockholder. Other methods such as maintaining a "key man" life insurance policy which would provide the proceeds to purchase the stock would help ensure that funds would be available.

Acknowledgment Of City's Role Should Be Considered

During the development of the management plan, both the City and WestWorld management acknowledged the role Reclamation played in the development of the park. This role was to be acknowledged through the erection of a sign stating this at the park. The City and WestWorld should also consider the role the

City plays in the park. The City has a significant monetary investment in the park and continues to invest human resources to work toward reaching the vision of the park. In other public-private ventures, this role has been acknowledged through the use of signs erected next to facilities or artwork and by acknowledging the City in publications or announcements. Opportunities such as these could be explored. A dual sign noting both Reclamation and City's role is one possibility as well as the possibility to add a notation in publications, brochures and other announcements developed by WestWorld.

CHAPTER FOUR

WestWorld Contract Compliance
City Auditor Report No. 9103

Enhancements Needed In Development Of Contracts And Amendments

At some point, between Council approval of the staff recommendation to enter into the contract with WestWorld management and audit fieldwork, two distinctly different documents have been used in conjunction with management of the park. The differences in the two contracts have impacted the relationship among the parties, resulting in discrepancies in decisions made regarding development. Opinions vary, but it is not certain how these two conflicting documents evolved. Initial steps have been taken to resolve this issue and further action is needed.

The most significant difference in these two documents is the terminology relating to the transfer of real property interest. One document refers to the contract as a lease, thereby conveying an interest in the real property itself. The other, a license, technically conveys only contract rights and not an actual interest in the land. There are also discrepancies in the extent of City involvement in the approval of park development. Because this issue affects the City's ability to control development, the determination of the correct document is needed before any future decisions relating to the park are made.

Other issues include an amendment to the land use agreement which contains the incorrect legal boundary description, execution of legal documents with incorrect terminology and amendments to the land use agreement without proper Council approval.

Determination of actual contract needed

In May 1986 as a study action item, City Council heard a presentation of the Pannell evaluation and discussed the staff recommendation to enter into a contract with WestWorld management. A copy of the proposed contract titled Lease and Management Agreement (LMA) was provided to Council prior to the meeting. City staff and WestWorld management acknowledged that the contract was acceptable to both parties and City staff stated that Reclamation had yet to approve the contract (Reclamation approval of subcontracts is a requirement of the land use agreement). At the end of discussions, a motion was made to approve the staff recommendation to enter into the contract noting that the contract was subject to Reclamation approval. This motion was approved by Council and was considered by City staff

to be approval of the contract. However, to date, there are multiple versions of the contract purportedly approved by Council as a result of this staff recommendation. Documentation could not be located to develop a complete historical trail of the evolution of the documents.

***Contract modified after
Council approval***

After Council approval, the contract was forwarded to Reclamation with a request for approval. After Reclamation review, City staff was informally notified that the contract was unacceptable. Reclamation directed both City staff and WestWorld's attorney at that time to eliminate all verbiage relating to "lease" and then to re-submit the contract with a request for approval. WestWorld's attorney submitted a revised version substituting Use and Management Agreement (UMA) as the title and, according to the cover letter accompanying the document, removing all language relating to "lease." While these revisions were being done, other changes were made to address concerns raised by Taliesin West.

The revised contract was then forwarded to Reclamation on July 1, 1986, with a request for approval. Conditional approval of the document was granted by Reclamation subject to additional changes outlined in correspondence to both the City and WestWorld in August and October 1986. These changes were also incorporated into a third revision of the contract and forwarded to Reclamation in December, 1986. Final Reclamation approval was not given until December 23, 1986.

We could not locate any documentation that would indicate that either version of the revised contract was presented to Council for approval prior to submission to Reclamation. City Charter stated that modifications in contracts awarded by City Council could only be made with approval of the Council.

***More than one version of
a signed contract exists***

During our audit, we attempted to locate an original contract between the City and WestWorld, but could not find one in City records. However, we did locate photocopies of two different signed documents, one titled Lease and Management Agreement (LMA) and one titled Use and Management Agreement (UMA). Both documents, while different in title and text, had signature pages which appear to be copies of the same page.

Discussions held with City staff, Reclamation representatives and WestWorld management did not result in a consensus regarding which document was the actual contract. Both documents indicate the same effective date and appear to have the same signature page but contain differences in text and type. The LMA version does not contain all of the provisions as outlined in Reclamation correspondence prior to Reclamation approval of the contract. Additional copies of the LMA with a different signature page were located in various City departments and a third LMA with a different signature page was found in the City Clerk files.

City staff involved in past administration of the contract stated that it was their understanding that the UMA was the correct document. Reclamation representatives also stated that the UMA was the correct document. However, WestWorld management stated that the UMA was the original contract, but that sometime in 1989 or 1990 the City approved a change to the LMA format. When further queried about the documentation to support the change, WestWorld management stated that such documentation could not be located. WestWorld management acknowledged that such a change would require Reclamation approval and that such approval could not be located.

City staff involved in the contract negotiations could not explain why there were two different documents purported to be the true contract. City files and Reclamation records have been searched in an effort to locate any documentation relating to the approval of the contract or any formal or informal approval of an amendment changing the terminology. None was found. Documentation that could be located consisted of WestWorld management requests to change the terminology, City correspondence to Reclamation relating WestWorld's request and Reclamation denial of it. Additional documentation from Reclamation directed the City to inform WestWorld management to stop referring to the contract as a lease.

According to City staff, Reclamation was very clear that the contract could not be anything other than a UMA. City records indicate that discussions regarding WestWorld management's desire to have a LMA were discussed with Reclamation, but that Reclamation did not relent. Reclamation insisted that the document indicate that the interest granted in the land was that of a license, not that of a lease.

**Multiple documents resulted
in disparate administration**

During the review of various documents affecting the project, we discovered numerous instances where the terminology relating to lease and use were interchanged. Documents also contained references to the contract as both a UMA and a LMA. According to City staff, the existence of different versions of the contract, each of which appeared to be the correct document, led to confusion in administration of the contract. City Attorney staff stated that the question as to which document governed the project made it difficult to give legal opinions regarding day-to-day administration of the contract and to review legal documents requested by WestWorld management and prepared for City signature.

***City Clerk certified
a LMA version***

In 1990, during solicitation of new investors in the partnership, WestWorld management approached the City Clerk requesting certification of the contract. City staff handling the request tabled the request because an original contract could not be located. In July 1990, a packet of documents was prepared by WestWorld representatives in preparation to obtain the City Clerk's certification of the contract WestWorld management desired to file with the County Recorder. There is no documentation in City files to indicate how the request was presented to the City; however, there is a record that the City Attorney's office requested verification of the parcels listed on a supporting document. The certification request was received and signed by the City Clerk. The documents were then released to WestWorld representatives and filed at the County Recorder.

Documentation could not be located and the staff involved in the request do not recall the procedures used to verify that the copy of the contract was the true and correct copy. The previous City Clerk stated that it (the certification request) was in the in-box for his signature and he simply signed it. City Attorney staff requesting verification of the parcel numbers do not recall any discussion regarding the request for certification.

The certified contract filed with the County Recorder is not an exact copy of documents on file with the City Clerk prior to the request. While the text is the same as other versions of the LMA located in different City offices, the signature page is different. However, it does match the copy of the contract in the possession of WestWorld management and the copy currently on file with the

EXHIBIT 3

**Signature Pages Of
Various Contract
Copies**

supersedes all prior negotiations, agreements, representations and understandings, if any, among the parties respecting such matters.

27. Counterparts

This Agreement may be executed by the parties hereto individually or in combination, in one or more counterparts, each of which shall be an original and all of which shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

Approved as to form:

By William E. Farrell, Esq.
William E. Farrell, Esq.

CITY OF SCOTTSDALE

By Herbert R. Drinkwater
Hon. Herbert R. Drinkwater
Mayor

Attest:

Ray A. Peterson

K-LIN CORPORATION

By Shirley E. Kuntz
Name
Title

County of: Maricopa
State of: Arizona

Appeared before me this 3rd day of July, 1990, Howard E. Kelm, President of K-Lin Corporation.

Debra L. Wood
Notary

My Commission Expires November 16, 1991

-36-

Signature Page Of LMA
Original In Developer's Possession

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Signature Page Of LMA
Copy In City Clerk's File

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Hon. Herbert R. Drinkwater
Mayor

Attest:

Ray A. Peterson

K-LIN CORPORATION

By Shirley E. Kuntz
Name
Title

Signature Page Of LMA
Copy Found In Water Resources

-36-

Signature Page Of UMA
Document Obtained From Bureau
And City Contract Officer

-36-

City Clerk. We were unable to ascertain whether the copy now on file with the City Clerk was placed there prior to the certification or after. However, the copy contains a dated notation of July 3, 1990 and signature of a notary who was also an employee of WestWorld. There is no explanation as to how a contract which should have been signed in 1986 could now be found in the City Clerk's file with an additional notarization of signature dated four years later.

LMA used to obtain financing

"Lease" versus "use" became an issue after final negotiations of the contract between the developer and the City. Reclamation would not approve the contract as a lease despite the developer's argument that a lease would facilitate financing for the project. Correspondence from the City to Reclamation in September 1986 requested Reclamation acknowledge the document to be a lease; however, Reclamation declined stating it was sympathetic to the needs of the developer but could not approve anything other than what had been transferred to the City. Reclamation acknowledged that the agreement with the City was similar to a lease, but would not state that it was a lease. Copies of the City's land use agreement with Reclamation were attached as exhibits to the contract.

However, a document titled LMA has been circulated and apparently used by the developer for financing purposes. During 1987, WestWorld management finalized a financing arrangement with Sun State Savings and Loan to create a joint venture partnership for development and construction at the park. Documentation obtained regarding the partnership refers to the contract between the City and K-Lin as a LMA. The General Ground Lease Assignment (assignment) prepared and executed by K-Lin in May 1987 and recorded at the County Recorder in July 1990 refers to the assignment of all rights, title and interest in and to "that certain Lease and Management Agreement dated July 1, 1986, by and between assignor [K-Lin] and the City of Scottsdale."

In 1990, a LMA also was presented to investors solicited by WestWorld to invest in the partnership and was used to obtain title insurance to secure a loan made to the partnership. In 1992 during audit fieldwork, a copy of the LMA and related title insurance documents were provided to the City by WestWorld management in an effort to support the inclusion of the lease rights' value in the preparing an appraisal of the development.

**Only original found in
possession of developer**

During our audit, we made numerous requests to WestWorld management for a signed, original document. After completion of fieldwork and as discussions regarding the documents escalated, WestWorld management informed the City Manager that they would provide an original.

City Auditor staff reviewed the document at WestWorld headquarters and obtained a copy of the document. The signature page of the document represented by WestWorld management to be an original contract matches the signature page of the document filed with the County Recorder and currently in the City Clerk's files. Since the pages of the original contract were not individually identified by initials and dates or some other form of identification, it is not clear what pages of the document were attached at the time of signing.

**Amendments Not
Properly Executed**

To date, the land use agreement has been amended four times. None of these amendments were approved by City Council. The last amendment, executed in 1989, adds more land to the agreement; however, it contains the wrong parcel descriptions. This error was first noticed by City staff in 1990 during a verification of parcels. Since the legal description from the amendment to the land use agreement was also used to prepare the amendment to the contract, both documents were in error. The legal description has been corrected as it relates to the contract. However, the correction has never been made to the land use agreement.

RECOMMENDATIONS

1. The City Manager should initiate a review of the master plan for the park with the ultimate goal to redefine, re-assert or modify the intent of the park and the direction of the park in the future.
2. The Contract Officer should:
 - a. develop specific performance criteria to ensure that future development meets the intent of the park. The procedures should include review of financial arrangements, subcontractors, and assurance that the City's revenue interest is protected.
 - b. instruct WestWorld management to submit all future development requests to the Contract Officer for approval prior to submission to development review.
 - c. establish procedures to periodically monitor the operations at the park to ensure that the usage of facilities adhere to the approved usage.
 - d. develop procedures to ensure that all costs associated with the construction, maintenance, and improvements at the park and costs for the contract administration are accurately captured on City records. Funds expended should be periodically compared with revenues generated, and reported to City management and Reclamation.
 - e. develop a checklist of contract requirements and develop procedures to ensure that all requirements are completed as directed.
 - f. pursue discrepancies in use payments noted for years 1988 through 1990.
 - g. develop criteria regarding approval of subcontracts at WestWorld. Procedures should then be developed to ensure that all subcontracts are approved prior to commencement of the activity.
 - h. develop procedures to periodically monitor the fees charged at WestWorld to ensure adherence to the fee schedule. Documentation should be maintained to support oversight of the policy.

- i. develop procedures to adequately monitor the availability of the public park area, fees charged and the maintenance of the area. Complete documentation should be maintained to support the oversight of these functions.
 - j. develop procedures to periodically monitor the reservation system. Documentation should be maintained to support the oversight of the system.
 - k. in conjunction with Reclamation and WestWorld management, work toward installation of a sign which would fulfill the obligation to acknowledge Reclamation's role in the development of the park.
 - l. develop procedures to ensure that all revenue streams at the park are captured and reflected in the calculation of the use payment.
 - m. develop an inventory of all personal property located at WestWorld, purchased by the City, with City funds or with cost sharing monies. After determination of the quantity and value of these items, logical and cost-effective administration alternatives for monitoring or transferring the ownership of the property should be developed.
 - n. develop procedures to ensure that all requests and actions related to WestWorld are adequately documented.
 - o. research, prepare the proper Council Action and present an amendment to the use agreement to amend the parcel legal descriptions.
3. The Contract Officer and WestWorld management should work together to:
- a. develop and act to incorporate submission of certified financial statements as a requirement into future contract addenda.
 - b. develop and act to incorporate specific performance measures into future contract addenda.

- c. develop and act to incorporate a capital reserve requirement into future contract addenda.
 - d. develop procedures to submit all additional revenue streams for City approval and determination of payment status prior to implementation.
 - e. review the fees charged for entrance to/use of the park. Care should be taken to ensure that the fees collected for entrance to/use of the park do not subsidize "non-recreational" activities at the park.
 - f. develop and act to incorporate language to protect the City's interest in the park upon the death or disability of the managing partner into future contract addenda.
4. The Contract Officer, in conjunction with Reclamation, should:
- a. develop procedures for fee increases to ensure adequate public notice prior to implementation.
 - b. identify documentation to be maintained by the City regarding park operations. Procedures should then be implemented to require WestWorld to supply copies of the requisite documents.
5. The City Manager should:
- a. obtain direction from legal counsel regarding the actual contract between WestWorld and the City.
 - b. direct all City departments to return copies of the Lease Management Agreements and Use Management Agreements to the Contract Officer for disposal. After determination of the correct document, a master contract should be developed with stamped identification numbers on each page and filed with the City Clerk. A bound document containing both the contract and the land use agreement with all appropriate exhibits and amendments should be prepared for distribution to anyone needing information regarding the park.

- c. in conjunction with the City Clerk and the City Attorney, prepare procedures governing the preparation, review, finalization, and safekeeping of contracts entered into by or on behalf of the City.
- d. in conjunction with the City Attorney and City Clerk, prepare procedures regarding the release of copies of contracts. These procedures should instruct City staff to only release complete, exact copies of contracts or to refer the request to the City Clerk.

Objectives, Scope And Method

WestWorld Contract Compliance
City Auditor Report No. 9103

This report reviews the development, current results and potential impact of WestWorld. It also assesses the level of compliance with contract performance measures and discusses other concerns relating to the viability of the park. This audit was a scheduled project approved by City Council as part of the City Auditor's 1991 audit program.

Subject to limitations imposed by WestWorld management, audit scope included review of the solicitation process, City construction of Phase One of the park, verification of revenues received by the City and tests of compliance related to the contract.

Audit scope was limited by restrictions imposed by WestWorld management on access to records regarding operations at the park. Historically, WestWorld management has had numerous inter-related corporations performing services at the park. We were provided access only to records identified by WestWorld management as necessary to verify calculation of the use payment. WestWorld management provided us with copies of financial data, contracts, fixed asset schedules and other documentation, but refused to allow us to take copies necessary to document our review of their operations off site.

Audit scope was also limited due to the fact that one of the partners in the Joint Venture had been taken over by the Resolution Trust Corporation. Documents relating to the transfer of ownership interest from Sun State Savings and Loan to current WestWorld management could not be located.

Apart from restricted access, audit work was conducted in accordance with generally accepted government auditing standards as they relate to expanded scope auditing in a local government environment and as required by Article III Scottsdale Revised Code §2-117 *et. seq.* Fieldwork was completed October 1, 1992. Report release was delayed pending the outcome of an investigation of contract discrepancies.

Analytical methods used during the audit included interviews with cognizant staff and reviews of relevant documents, as well as specific tests. We did not audit construction payments nor did we

audit Economic Development studies of the economic impact of events held at the park. The contract and agreements were reviewed, and where required, discussion was held or informal opinions were sought from City Attorney staff. Documents were obtained and reviewed and staff were interviewed from WestWorld and the Water and Lands Division of Reclamation. Interviews were also held with previous City staff knowledgeable about the contract.

The Management Services General Manager, WestWorld management and the Project Manager for the Bureau of Reclamation have reviewed this report. Written responses can be located in the Appendices. The Action Plan delineates management's level of concurrence with each recommendation and an implementation status where applicable.

Mr. Paul McKee from the Tax Audit Division in Financial Services assisted with work on the project.

APPENDIX A

Management Responses

August 2, 1993

TO: Cheryl Barcala, City Auditor
THROUGH: Dick Bowers, City Manager
FROM: Carder Hunt, General Manager, Management Services Department
SUBJECT: WestWorld Contract Compliance City Auditor's Report No. 9103

We have reviewed the City Auditor's report, "WestWorld Contract Compliance" No. 9103. We concur with the recommendations and would like to report the following actions taken:

- ◆ The Bureau of Reclamation and the City have notified the (previous) WestWorld operator that a complete review of the Master Plan and Management Plan must be completed prior to any further approvals for development or subcontract commitments at WestWorld (Reference letter #93W.015)
- ◆ WestWorld has been notified that all submittals to the City of Scottsdale for City approval or for BOR review, must be sent through the Contract Officer. All correspondence will be stamped and recorded when received, and all responses will be numbered, filed, and returned to WestWorld when action has taken place. (Reference letter #93W.016)
- ◆ The Bureau of Reclamation has indicated a desire to install an appropriate sign acknowledging Reclamation's role in the development of the Park. They have also indicated that it is their responsibility to provide that sign.
- ◆ Periodic, on-site inspections of WestWorld by the City's Contract Officer have been initiated.
- ◆ New WestWorld management has acknowledged the need to address the Master Plan and the Management Plan. The Bureau of Reclamation has agreed to work with WestWorld to accomplish this task, and has agreed to relax their moratorium on development and allow for business to proceed as usual as long as progress is being made.

City Auditor's Report No. 9103
Page 2

The following actions are planned.

- ◆ A complete review of the WestWorld Management Plan has been initiated and addresses the issues of performance, procedures, reviews, and approvals. This review also includes a review of financial collection and reporting procedures, evaluation of approval processes, and establishment of ongoing reporting functions. Items that need to be reviewed for possible contract amendments have been forwarded to the City of Scottsdale legal department for analysis.
- ◆ Management will work closely with the new WestWorld operators to identify specific performance measures. Management will explore the possibility of establishing a capital reserve fund for support of future projects. Current contract language does not require WestWorld to dedicate any revenue for special purposes.
- ◆ The Bureau of Reclamation and the City will require that a review of all revenue streams, present and future, be a part of the new, revised Management Plan.
- ◆ The revised Management Plan will include development of procedures for revenue reporting and additional reporting systems to allow for an ongoing evaluation of Park operations.

SUMMARY

The City of Scottsdale Management has initiated the review process of the Master Plan for development at WestWorld. New WestWorld management agrees that this is a high priority, and that the previously approved conceptual Master Plan needs to be reviewed to determine if elements of that plan are still appropriate for development at WestWorld.

In addition, the majority of the recommendations outlined in the WestWorld audit, regarding daily operation, reservation procedures, financial and revenue reconciliation, and fees and charges for amenities at WestWorld, are currently under review with the WestWorld manager, the City of Scottsdale, and the Bureau of Reclamation.

APPENDIX B

WestWorld Management Responses



July 30, 1993

Ms. Cheryl Barcala
Auditor's Office
City of Scottsdale
3939 North Civic Center Boulevard
Scottsdale, Arizona 85251

Dear Cheryl:

We have received the draft report entitled "WestWorld Contract Compliance." As you know, WestWorld is a joint venture between two Arizona corporations, Capital Realty Corporation, Scottsdale (CRC-S) and Hatband, Inc. Both companies are owned by Mary Wilcox. You are also aware that Hatband purchased the interest in the joint venture previously held by K-Lin Corporation, a company owned by Howard Keim, on June 30, 1993.

Mr. Keim and K-Lin had been involved with WestWorld and its predecessor organizations since the inception of the project. Mrs. Wilcox and CRC-S became lender and co-venturer respectively, in 1989. Until June 30, 1993, Mr. Keim was the managing partner.

Much of the report is historical in nature. Present ownership and management cannot comment about many of the events described in the report with first-hand knowledge. We understand that you have conducted extensive interviews with Mr. Keim, and we hope you have evaluated all of his comments and information on the historical chronology.

We do have an important comment to make with respect to the City's apparent problem with multiple documents dealing with the inception of the project. When CRC-S made its investment in 1989, it relied expressly on the "Lease and Management Agreement" dated July 1, 1986, (the "Lease"). The Lease was represented to CRC-S as an official and binding agreement between the City and K-Lin Corporation. The Lease was so certified by the City Clerk and title insurance was issued based upon the authenticity and validity of this agreement. CRC-S and Mrs. Wilcox subsequently invested millions of dollars in WestWorld in reliance upon the Lease. We know of no basis upon which the continued validity of the Lease can be questioned.

We recognize that it may well serve the interests of all concerned to simplify or otherwise modify the contractual agreement between WestWorld and the City. However, unless and until

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Scottsdale, Arizona 85260
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FAX (602) 483 1883

Ms. Cheryl Barcala
July 30, 1993
Page 2

the parties jointly so agree, WestWorld and the City are contractually bound by the provisions of the Lease. We assume that nothing in the draft report is meant to suggest the contrary.

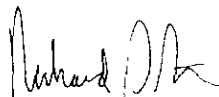
Although we have discussed with you a number of other statements included in the draft report, two issues are paramount. First, the need for an acceptable physical and business plan for the use of the land, and second, the need to resolve potential conflict between the Bureau of Reclamation, the City and WestWorld as to appropriate uses.

The City's own consultants confirmed prior to the commencement of the project that equestrian usage would not be economically sound in and of itself. The master plan prepared by K-Lin, and conceptually approved by the City and the BOR, contains a multitude of highly commercial, non-equestrian facilities requiring major capital investment. In fact, major capital investment has been made in reliance on the plan, approaching some 20 million dollars between the City and WestWorld. Unless all parties can agree upon appropriate plans and procedures governing future use of the property, the future success of the project will be greatly hampered.

These problems are apparent to the current ownership and management of WestWorld, the City and the representative of the BOR. A concerted program to resolve these issues is already underway, involving extensive public input, legal reviews, operational and administrative streamlining, and re-examination of the master plan. It is obvious that this effort must be done in a positive environment, so that a truly successful public/private partnership can be forged.

We pledge ourselves to that effort. It's easy, but not too productive, to look backward. It's hard, but more rewarding, to look forward -- mindful of prior mistakes but committed to future success.

Sincerely,



Richard S. Stevens
President

RSS/srt

Reports Issued
Office of the City Auditor
Scottsdale, Arizona

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<u>Issue Date</u>	<u>Report Number</u>	<u>Report Title</u>
1993		
August	9201	City Clerk Operational Audit
May	8903.1	Scottsdale Cultural Council Contract Administration Progress
1992		
December	8902.1A	City Parcel Database
December	9010B	Dial In Security System Project Evaluation
October	8902.1 and 9002	Progress Since 1989 In Property Tax Management, City of Scottsdale, Maricopa County
1991		
December	9102	Tournament Players Club Contract Compliance and Related Issues
October	8802B	Utility Bill and Tariff Costs, Scottsdale Water Service Company, City of Scottsdale
August	9105	Scottsdale Police Department Imprest and RICO Financial and Related Operational Management Practices
May	9003	Scottsdale City Court Financial and Related Operational Management Practices
April	8802A	Utility Bill and Tariff Costs, City of Scottsdale

<u>Issue Date</u>	<u>Report Number</u>	<u>Report Title</u>
1990		
December	9005	Investigation of Internal Control Weaknesses in the Communications Services Section of the Office of Management Systems
September	8905	Office of Management Systems General Controls
September	9001	Attestation Audit on Urban Mass Transportation Administration Reports and Related Scottsdale Connection
April	9004	Investigation of Internal Control Weaknesses Involving Community Development Block Grant Funds and Other City Resources
April	8903	Scottsdale Cultural Council Contract Performance and Compliance
November	8904	Preliminary Survey Covering City of Scottsdale Automated Systems
September	8902	Property Tax Management Practices City of Scottsdale/Maricopa County
April	8901	Attestation Audit on Inventory Moved During Police Property and Evidence Room Relocation in February 1989
April	8801	Perquisite Management Practices
1988		
December	--	Presentation on City Auditor Operations